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**Seventy-second session**
Item 102 of the provisional agenda*
**Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session**

# Work of the Advisory Board on Disarmament Matters

## Report of the Secretary-General

*Summary*

The Advisory Board on Disarmament Matters held its sixty-seventh session in Geneva from 25 to 27 January 2017 and its sixty-eighth session in New York, from 28 to 30 June 2017. During those sessions, it focused on the following substantive items on its agenda: (a) the threat of cyberattacks by terrorists on nuclear facilities and the potential role of cybermeans in threatening biosecurity; (b) the impact of artificial intelligence on international security; and (c) review of the implementation of the 34 recommendations contained in the 2002 United Nations study on disarmament and non-proliferation education (A/57/124) and, if necessary, arrangements for its revision, taking into account the latest experiences and new technologies in the area of education programmes.

On the cyberissue, the Board welcomes the establishment of the United Nations Office of Counter-Terrorism and recommends that it include in its remit the threat of cyberattacks by terrorists on nuclear facilities and on biofacilities. The Board endorses the idea of the United Nations becoming the key norm entrepreneur in the cyberrealm by involving all stakeholders, including States, international organizations, industry and civil society, in crafting the necessary international governance arrangements. The Board expresses its support for the Secretary-General's idea of forming a scientific advisory group to keep him informed of critical scientific and technical advancements that have security implications; they would include cyberdevelopments that have implications for nuclear security and biosecurity.

On nuclear security, the Board expresses its support for the central role of the International Atomic Energy Agency (IAEA) and calls for more attention and resources to be devoted to countering the cyberthreat to nuclear materials and installations. IAEA could, for instance, become the global repository of information on potential and failed threats against peaceful nuclear installations. The Agency

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could also expand the functions of its Incident and Emergency Centre to include cyber-related incidents or the threat of such incidents. With regard to biosecurity, the Board suggests that the Secretary-General seek the views of Member States regarding multilateral approaches to deal with the cyberthreat to biosecurity, given that no standing multilateral body is currently seized of the issue.

The Board strongly welcomes the attention that the Secretary-General has already given to artificial intelligence issues and urges the Secretary-General to continue to use every opportunity to bring the challenges and complexity of such issues to the notice of Member States. In addition, the Board proposes that interested Member States table a resolution during the seventy-second session of the First Committee of the General Assembly to seek the views of all Member States on the issue. The Board suggests that Member States consider commissioning the United Nations Institute for Disarmament Research (UNIDIR) to carry out a study, complemented by an expert panel, of the likely impact of artificial intelligence on international security (with the necessary funding allocated or identified in advance).

In its review of the recommendations contained in the 2002 United Nations study on disarmament and non-proliferation education, the Board concluded that the study remained relevant and comprehensive. The Board suggests that it be reissued with a new foreword by the Secretary-General and by the new High Representative for Disarmament Affairs. It should be distributed at all relevant United Nations gatherings. In view of the poor response of Member States to requests to report on their efforts in the field of disarmament and non-proliferation education, new methods need to be found to encourage a better response. Reporting should be made as technically easy as possible. Perhaps a renewed, urgent reminder to States would produce more responses, especially if done when announcing that the 2002 study is to be re-released. The Board commended the United Nations Office for Disarmament Affairs for its work in implementing the recommendations of the study and encouraged it to consider additional creative methods. They could include awards for best educators, journalists and writers in the field, the appointment of "peer ambassadors", seminars on best practice in disarmament education and online debates.

Serving as the Board of Trustees of UNIDIR, the Board approved the work plan and budget of the Institute for the period 2017-2018 and the submission to the General Assembly of the report of the Director of the Institute on its activities and financial status. The Board of Trustees expressed its gratitude to the Director and staff of UNIDIR for successfully managing the projects of the Institute. In that regard, the Board appreciates the Secretary-General's support for UNIDIR and hopes that he continues to support the ongoing efforts to secure its future.

# I. Introduction

1. The Advisory Board on Disarmament Matters held its sixty-seventh session in Geneva from 25 to 27 January 2017 and its sixty-eighth session in New York from 28 to 30 June 2017. The present report is submitted pursuant to General Assembly resolution 38/183(O). The report of the Director of UNIDIR was approved by the Advisory Board serving as its Board of Trustees and has been submitted in document A/72/154.

2. Trevor Findlay (Australia) presided over both sessions of the Board in 2017.

3. The present report summarizes the deliberations of the Board during its two sessions and the specific recommendations conveyed to the Secretary-General.

# II. Substantive discussions and recommendations

## A. The threat of cyberattacks by terrorists on nuclear facilities and the potential role of cybermeans in threatening biosecurity

4. At its sixty-seventh and sixty-eighth sessions, the Advisory Board discussed the threat of cyberattacks by terrorists on nuclear facilities and the potential role of cybermeans in threatening biosecurity. To facilitate its discussion, the Board heard from outside experts: Caroline Baylon from the Center for Strategic Decision Research; Filippa Lentzos from King's College, London; Daniel Feakes from the Implementation Support Unit for the Biological Weapons Convention; and Lucas Kello from the Centre for Doctoral Training in Cyber Security at Oxford University.

5. The Board recognized that an emerging technology such as cyber cannot be controlled with traditional arms control tools or the existing disarmament machinery, owing to its often intangible nature, fast-paced evolution and the secrecy associated with its development. The difficulty of attributing responsibility and liability are also complicating factors that challenge traditional approaches.

6. The Board noted that there was a complicated debate as to whether a cyberattack constituted a war-like act or was a form of tolerated peaceful activity until it crossed a threshold, such as causing death and destruction. It was also noted that cyberattacks that sought to acquire information could be regarded as a form of espionage. Cyberattacks aimed at sabotage could be seen as entering a different realm, closer to war.

7. The Board noted with satisfaction that UNIDIR was preparing a mapping exercise on the various initiatives in the United Nations system on cyber- and international security. The Board requests that it be given the widest dissemination possible, including by the Office for Disarmament Affairs.

8. The Board identified several parallels between nuclear security and biosecurity in the cyberdomain, including the following:

(a) Both require more than traditional physical security and protection ("guards, gates and guns") as well as security of information;

(b) Both confront the myth of the "air gap" (the physical separation of facility systems from the Internet), as providing the ultimate security (USBs and personal devices are among the potential cyberattack pathways);

(c) Both face supply chain vulnerabilities (supplies, components and maintenance may introduce cyberrisks);

(d) Both face so-called insider threats, whereby rogue employees may seek to purloin information or sabotage a plant;

(e) Both need to pay attention to cyberculture and cyberhealth and bridge differences in approach between operators and information technology specialists;

(f) At the national level, the means for strengthening cybersecurity tend to be the same: norms, standards, national legislation, regulations, education and training and the involvement of all stakeholders, including industry;

(g) Internationally, the solutions also tend to be similar: promulgation and promotion of internationally acceptable norms and standards, awareness-raising, education and training (developing countries are particularly in need of capacity-building and assistance).

9. However, there are some major differences between the two fields, as revealed in the expert presentations and Board discussion.

**Cyber- and nuclear security**

10. Compared to the biosecurity field, the Board recognized that the nuclear security field was replete with organizations, treaties, arrangements and initiatives that have begun to focus on the threat to nuclear facilities from cyberattacks.

11. IAEA plays a central role in multilateral cooperation on nuclear security, including in the cyberrealm.

12. The Board acknowledged the Ministerial Declaration of the International Conference on Nuclear Security of 5 December 2016 in which the participants endorsed the core nuclear security activities undertaken by IAEA whereby it assists States, upon request, in their efforts to establish effective and sustainable national nuclear security regimes, including providing guidance development, advisory services and capacity-building. The Board supports the efforts of IAEA to assist Member States to strengthen computer security to deal with terrorist attacks on nuclear facilities.[1] The Board noted the possibility of trust- and confidence-building measures in the realm of cyber and nuclear security.

13. The Board also noted that the new Nuclear Industry Steering Group for Security has launched a cyber working group that may produce recommendations on cybersecurity measures from an industry perspective.

**Cyber- and biosecurity**

14. Biosecurity is quite different to nuclear security, both in terms of the cyberthreat and the means to tackle it. One of the revelations of the expert presentations was that, unlike a cyberattack on a nuclear facility, which may have results that are the equivalent of a radiological weapon attack, it is apparently hard for experts to envisage how a cyberattack on a biological facility could cause the release of harmful pathogens into the environment to create the equivalent of a biological weapon attack. Pathogens are required to be stored in secure freezers according to international standards and it is difficult to envisage a mechanism for them being maliciously opened by cyber means. Although there are no "formulas" for bioweapons to be stolen (like chemical formulas for chemical weapons), stealing information is one potential aim of a cyberattack. The biggest concern with biosecurity is apparently that hackers might compromise the access codes and logs of a bio facility to gain information that could be exploited outside the laboratory by

[1] See www.iaea.org/sites/default/files/16/12/english_ministerial_declaration.pdf.

highly trained personnel to reproduce the research it has carried out. Another threat to biofacilities is sabotage or other malicious damage, including by terrorists.

15. Unlike nuclear weapons, biological weapons would not be predeployed on launch vehicles but only weaponized prior to use. The source materials, living pathogens, are therefore not prepared in bulk in advance but grown when required. This means that a cyberattack cannot cause a bioweapon to launch. Indeed, with wide adherence to the Biological Weapons Convention, there should be no biological weapons in existence. The Convention does not, however, have a monitoring or verification organization, so there is no body responsible for cyberterrorism as it relates to biosecurity. The confidence-building transparency measures agreed by States parties do not have a cyberthreat element and the treaty's Implementation Support Unit does not have the resources to follow cyberthreat developments. There is thus currently no institutional home in the United Nations system for the cyber- and biosecurity nexus, unlike the IAEA in respect of nuclear security.

16. **The Board makes the following recommendations:**

**General**

(a) **The Board welcomes the establishment of the United Nations Office of Counter-Terrorism and recommends that it include in its remit the threat of cyberattacks by terrorists on nuclear facilities and on bio-facilities;**

(b) **The Board endorses the idea of the United Nations becoming the key norm entrepreneur in the cyberrealm by seizing the opportunity to involve all the stakeholders in crafting the necessary international governance arrangements, including States, international organizations, industry and civil society;**

(c) **The Board expresses its support for the Secretary-General's idea of forming a scientific advisory group to keep him informed of critical scientific and technical advancements that have security implications. That would include cyberdevelopments that have implications for nuclear security and biosecurity;**

**Nuclear security**

(d) **The Board supports the central role of IAEA in nuclear security and calls for more attention and resources to be devoted to countering the cyberthreat to nuclear materials and installations. IAEA could, for instance, become the global repository of information on potential and failed threats against peaceful nuclear installations. It could also expand the functions of its Incident and Emergency Centre to include cyber-related incidents or the threat of such incidents;**

**Biosecurity**

(e) **The Board suggested that the Secretary-General seek the views of Member States on the multilateral approaches that might be taken to deal with the cyber threat to biosecurity, given that no standing multilateral body is currently seized of the issue.**

## B. The impact of artificial intelligence on international security

17. The Board welcomed the addition of this new topic, a "frontier" issue which has many dimensions — political, legal, technical, social and ethical — that are

confronting the international community and which may have revolutionary effects on international security. Both threats and opportunities need to be considered.

18. The Board recognizes that its own expertise on this issue, as for most United Nations institutions, is limited. It is therefore seeking to educate and inform itself as quickly as possible, especially to avoid making proposals that "reinvent the wheel". To that end the Board received a briefing at its January session from Stuart Russell, Professor of Electrical Engineering and Computer Sciences at the University of California at Berkeley, one of the leading experts in the field.

19. In June the Board was briefed by Elena Tomuta of the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization on the use of artificial intelligence to facilitate the detection of nuclear explosions, both in regard to seismic monitoring and on-site inspection. This is an impressive example of the use of artificial intelligence "for good". The Board also asked IAEA to brief it on the use of artificial intelligence in nuclear safeguards but the Agency regrettably declined. The Board expressed its desire for a briefing from IAEA at its next session. In addition, Robert Fitzpatrick and Daniel Pedraza of United Nations Global Pulse provided a briefing on the use of big data to help implement the Sustainable Development Goals. They also speculated on the potential uses of big data in the disarmament realm. Food-for-thought papers were provided by Board members Choi Sung-joo and Pervez Hoodbhoy.

20. In addition, the Board had before it governmental reports, expert studies, including a series of excellent studies done by UNIDIR, and documentation on lethal autonomous weapons systems under the Convention on Certain Conventional Weapons. Lethal autonomous weapons systems are clearly a subset of the broader issue of artificial intelligence and its implications for international security. The Board's agenda item on cyber threats is also relevant.

21. In its initial foray into the subject, Board members made preliminary observations which may guide its future work:

(a) Artificial intelligence can benefit international security, as well as threatening it. The Board identified, for instance, the potential utility of artificial intelligence in monitoring, verification and compliance in respect of arms control and disarmament agreements. Benefits include reducing costs and increasing efficiency of implementation.

(b) Contrary to initial impressions that industry is setting the pace for policy development in this field, it is clear that industry is looking to multilateral institutions to help guide it in norm-building and other governance aspects. One example is the recent "AI for good" Summit organized by the International Telecommunication Union in collaboration with the XPRIZE Foundation. The United Nations system should seize this opportunity: it is in an excellent position to bring together the various stakeholders, including governments, international organizations, industry and civil society.

(c) United Nations Global Pulse has demonstrated that artificial intelligence can be used to help implement the Sustainable Development Goals using innovative, iterative and experimental "laboratories" that focus not just on technical solutions, but on policy and ethical implications such as privacy concerns. The Board sees a possibility, in pursuit of Goal 16 on peace, justice and strong institutions, to follow a similar approach in respect of international security issues, notably disarmament and arms control. It proposes to give further consideration to how this might be implemented.

(d) While many implications of artificial intelligence for international security are as yet uncertain, one that is already apparent is the use of autonomous

or semi-autonomous weapons systems and other uses of robots in warfare. The Board acknowledged the work of civil society and the scientific community in raising awareness of the artificial intelligence issue;

(e) Regardless of the particularities of the use of artificial intelligence in warfare, international humanitarian law should prevail at all times. International human rights law should also be taken into account;

(f) The United Nations has a golden opportunity to provide the international security context and framework for developments in artificial intelligence, if it moves quickly. The Board will give closer consideration to this issue if requested.

22. **The Board makes the following recommendations:**

**(a) Conscious of the complexity and novelty of this "frontier" issue, the Board recommends that artificial intelligence remain on its agenda for the next session;**

**(b) The Board identified particular aspects of artificial intelligence to be considered in its further work:**

**(i) Given the current level of definitional fluidity and confusion about artificial intelligence, the Board saw value in gathering definitions and considering which best fits the international security field;**

**(ii) Having identified the "human in the loop/on the loop" as a crucial threshold issue for thinking about artificial intelligence, Board members expressed the strong view that machines should not be permitted to make decisions to target or kill humans. Regarding proposals that the United Nations adopt outright a "ban on offensive autonomous weapons beyond meaningful human control", exactly how such a ban might be agreed internationally should be examined by the Board at its next meeting. The implications for both offensive and defensive systems need to be considered;**

**(iii) Additional specific issues that should be tackled by the Board include: intangible technology transfers and the lack of international regulatory standards or structures for dealing with them; and the possibility of export control regimes (3D printing is seen as having particular implications for weapons proliferation);**

**(iv) The need to enhance capacity-building, awareness-raising, training and information-sharing on best practices and lessons-learned;**

**(c) The Board strongly welcomes the attention that the Secretary-General has already given to the artificial intelligence issue and urges him to continue to use every opportunity to bring the challenges and complexity of the artificial intelligence issue to the attention of Member States;**

**(d) To encourage Member States to begin paying attention to the implications of artificial intelligence and international security, the Board proposed that interested Member States table a resolution during the seventy-second session of the First Committee of the General Assembly to seek the views of all Member States on the issue. The Board suggested that Member States consider commissioning UNIDIR to carry out a study, complemented by an expert panel, of the likely impact of artificial intelligence on international security (with the necessary funding allocated or identified in advance). The UNIDIR study could be funded through voluntary contributions or in accordance with article VII.3 of its Statute on regular funding for specific**

**activities mandated by the General Assembly. UNIDIR is requested to provide a preliminary draft estimate of the cost of such a study.**

## C. Review of the implementation of the 34 recommendations contained in the 2002 United Nations study on disarmament and non-proliferation education and, if necessary, arrangements for its revision, taking into account the latest experiences and new technologies in the area of education programmes

23. In the 2002 study on disarmament and non-proliferation education (A/57/124) the Board is encouraged "to consider periodically follow-up action related to disarmament and non-proliferation education".[2] The most recent consideration by the Board was in 2010.[3]

24. To facilitate its discussion on this occasion, the Board considered a food-for-thought paper by Board member Vladimir Orlov, who was part of the group that produced the original study in 2002. He provided an overview of the 34 recommendations and the need for follow-up at this juncture. The Board also had the benefit of a presentation by Dimitri Nikonov of IAEA on the innovative International Nuclear Security Education Network, which could serve as a model for disarmament education. The Board was also briefed by John Ennis of the United Nations Office for Disarmament Affairs and Kate Dewes of the New Zealand Disarmament and Security Centre.

25. The Board is of the view that while certain elements of disarmament education have to be strengthened, there is no need for a new study, as the 2002 study remains relevant and comprehensive. Rather, the focus should be on further and full implementation of the 34 recommendations it contains.

26. The Board stresses the need to put disarmament into the context of international security. Measuring the impact of disarmament education, through both qualitative and quantitative metrics is currently often neglected. Even if impact can be difficult to measure, attempts should always be made to do so.

27. The Board expressed concern that disarmament education is of decreasing interest among the younger generation. Even among senior policymakers there can be a lack of awareness and knowledge. People in different parts of the world have different perspectives on the disarmament agenda, different priorities (for example nuclear versus conventional disarmament) and different educational styles. Disarmament education therefore needs to be tailored to different generations, States, regions and cultures.

28. The Board strongly stressed the need for education materials on disarmament and non-proliferation to be translated into all six official languages of the United Nations. Easier and more cost-effective ways need to be found to do so.[4] The Disarmament Information Programme run by the Office for Disarmament Affairs has demonstrated some possibilities. Automatic translation technology may one day provide a cheap and easy method of translation but is not quite ready yet.

29. The Board also stressed that it was vital for journalists and media representatives to enhance their knowledge of disarmament and non-proliferation.

[2] See A/57/124, recommendation 30.

[3] A/65/228.

[4] In support of this position the Board referenced General Assembly resolution 69/324 of 21 September 2015 on multilingualism.

That applied, in particular, to the digital media, which plays an increasingly important role today.

30. It was also vital to "educate the educators" at the national, regional and international levels in order to achieve a multiplier effect.

31. **The Board makes the following recommendations:**

(a) **The 2002 study on disarmament and non-proliferation education remains relevant and comprehensive in its coverage. The Board suggests that it be reissued with a new foreword by the Secretary-General and by the new High Representative for Disarmament Affairs. It should be distributed at all relevant United Nations gatherings;**

(b) **In view of the poor response of Member States to requests to report on their efforts in the field of disarmament and non-proliferation education, new methods need to be found to encourage a better response. Reporting should be made as easy as possible technically. Perhaps a renewed, urgent reminder to States might produce more responses, especially if done when announcing that the 2002 study will be re-released;**

(c) **The Board commended the Office for Disarmament Affairs for its work on furthering the recommendations in the 2002 study and proposed that it consider additional creative means of advancing disarmament education. That could include awards for best educators, journalists and writers in the field, the appointment of "peer ambassadors", seminars on best practices in disarmament education and the launching of online debates.**

## III. Board of Trustees of the United Nations Institute for Disarmament Research

32. The Advisory Board on Disarmament Matters, acting in its role as the Board of Trustees for UNIDIR, held two meetings during the year, on 25 January in Geneva and on 28 June in New York.

33. The January meeting was devoted to an extensive briefing by the Director and staff of UNIDIR on the current status and activities. The Board welcomed the Director's message that the crisis period was over, the Institute having weathered the change management process, a financial crisis and the introduction of Umoja and International Public Sector Accounting Standards. The Director laid out several continuing challenges:

(a) Sustaining and growing institutional capacity and funding;

(b) Improving outreach and visibility;

(c) Preparing for the 2018 independent third party assessment;

(d) Expanding partnerships with other entities, both within the United Nations system and externally.

34. The Board recommended that with many of the immediate challenges to the future of UNIDIR now resolved, efforts should be made to strengthen the relationship between it and the Board, including raising the profile of the Board in its statutory role as the governing body of the Institute and having it take better advantage of UNIDIR research outputs. Several reforms were progressively implemented during the year.

35. At its meeting in June, the Board was given an update by the Director on the status and activities of the Institute. It approved the report of the Director on the

activities of the Institute for the period from January to December 2016 and the proposed programme of work and financial plan for 2017 and 2018 (A/72/154).

36. The Board was impressed by the sheer number of projects and activities undertaken by the Institute over the past year and the quality of its research output. It expressed its gratitude to the Director and staff for successfully managing the substantive work of the Institute. The Board especially appreciated the steps taken by the Institute to enhance its communications and outreach by launching "UNIDIR updates", engaging with social media and employing two part-time consultants.

37. On the question of funding, the Board expressed its satisfaction with the continuing success of the Director and UNIDIR staff in raising project funding, including from private philanthropic sources, as well as Member States.

38. As required by the UNIDIR Statute, the Board considered the question of the subvention from the regular budget of the United Nations for UNIDIR and strongly recommended that it be approved. It also strongly supported a one-off increase in the regular budget subvention for the biennium 2018-2019, as recommended in General Assembly resolution 70/69 on the thirty-fifth anniversary of UNIDIR. The Board noted that this resolution had been adopted by consensus.

39. The Board reiterated its previous conviction, as recommended in the 2015 internal review (the Bowen report), that the minimum institutional structure for UNDIR should be five posts (see A/70/186, para. 44). In order to ensure the operational sustainability and independence of the Institute, the annual subvention should be increased to cover the costs of all the institutional staff, including the position of Chief of Research, which would further strengthen research design and integrity.

40. The Board looked forward to the independent third-party assessment of UNIDIR, expected to be carried out in early 2018, to be followed by a report of the Secretary-General. The Board stressed that the sustainable and stable funding structure and operating model outlined in the report of the Secretary-General must respect the mandate and objectives of the Institute, as contained in the UNIDIR Statute. It reiterated its call to the Director of UNIDIR to begin preparing metrics on the performance of the Institute to inform the independent assessment. The Board expressed its wish to be consulted by the external assessor when it meets in January 2018 in Geneva, as well as having the opportunity to provide inputs into the draft assessment prior to its submission to the Secretary-General. The Board expressed the hope that the sustainable and stable funding structure and operating model for the Institute that the third-party assessment will consider will also address the need for an increased regular budget subvention.

41. Finally, the Board of Trustees looked forward to the decision on the UNIDIR directorship and urged that this be resolved as soon as feasible to contribute further to the stability of the Institute.

## IV. Future work and other matters

42. To set its future work in context, the Board agreed to hold a general debate on the international security situation at the beginning of each of its meetings.

43. As to future topics, the Board suggested that it be given only two substantive topics each year to permit more thorough consideration of each one. It strongly recommended that one of its current agenda items, "Artificial intelligence and international security", remain on the agenda for at least another year.

44. In order to facilitate its consideration of a new agenda item, the Board would welcome a brief explanation from the Secretariat of the rationale behind the selection of the item.

45. To further assist the Board in ensuring continuity of its work, it would welcome the appointment of its Chair for a two-year term, rather than one year, as is the current practice. The Board would also welcome an early announcement of the appointment of the Chair, well before the its first annual meeting in January, to ensure a smooth leadership transition. Ideally, the Chair should be a member who has served for at least one year, so that he or she is familiar with the operation of the Board. After a two-year term as Chair he or she would remain on the Board for another year to assist and advise the new Chair.

46. In view of the recent expansion of the Board agenda to include items relating to international security generally, in particular the impact of emerging technologies, the Board agreed to craft a vision statement for consideration at its next meeting.

# Annex

## Members of the Advisory Board on Disarmament Matters 2017

Mely Caballero ANTHONY
Associate Professor and Head of the Centre for Non-Traditional Security Studies
S. Rajaratnam School of International Studies,
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Wael AL-ASSAD
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Head of the Mission of the League of Arab States in Vienna

CHOI Sung-joo
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Ministry of Foreign Affairs and Trade, Republic of Korea

Lucia DAMMERT
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Vladimir DROBNJAK
Permanent Representative of Croatia to the United Nations,
New York

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Anita E. FRIEDT
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Ambassador for Disarmament Affairs
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Jarmo Sareva (ex officio member)
Director, United Nations Institute for Disarmament Research

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**Seventy-second session**
Item 73 (b) of the provisional agenda*
**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

# Rights of indigenous peoples

## Note by the Secretary-General

The Secretary-General has the honour to transmit the report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples, Victoria Tauli-Corpuz, submitted in accordance with Human Rights Council resolution 33/12.

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# Report of the Special Rapporteur of the Human Rights Council on the rights of indigenous peoples

*Summary*

The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 33/12. It provides a brief summary of her activities since her previous report and an assessment, informed by experiences of her mandate, on the status of implementation of the United Nations Declaration on the Rights of Indigenous Peoples for the occasion of its tenth anniversary.

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# I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the rights of indigenous peoples pursuant to Human Rights Council resolution 33/12. In the report, she provides a brief summary of her activities since her previous report (A/71/229) and an assessment, informed by experiences of her mandate, on the status of implementation of the United Nations Declaration on the Rights of Indigenous Peoples on the occasion of its tenth anniversary.

# II. Activities of the Special Rapporteur

2. As part of her mandate from the Human Rights Council, the Special Rapporteur undertakes four interrelated areas of work, namely, country visits; thematic studies; promotion of good practices; and communications to Governments on alleged cases of human rights violations.

3. Since she submitted her last report to the General Assembly, the Special Rapporteur has carried out two official country visits: to the United States of America in February 2017 and to Australia in March/April 2017. The reports on those visits (A/HRC/36/46/Add.1 and A/HRC/36/46/Add.2) will be submitted to the Human Rights Council in September 2017, together with a thematic report on climate change funds (A/HRC/36/46).

4. With a view to improving the effectiveness of and coordination between the existing bodies within the United Nations system with specific mandates on the rights of indigenous peoples, the Special Rapporteur participates in the annual meetings of the Permanent Forum on Indigenous Issues and of the Expert Mechanism on the Rights of Indigenous Peoples.

# III. Implementation of the United Nations Declaration on the Rights of Indigenous Peoples and the work of the Special Rapporteur on the rights of indigenous peoples

5. The General Assembly adopted the United Nations Declaration on the Rights of Indigenous Peoples on 13 September 2007 (resolution 61/295). The mandate of the Special Rapporteur on the rights of indigenous peoples was extended to include the task of promoting the Declaration within weeks of its adoption in 2007.[1]

6. On 22 and 23 September 2014, United Nations Member States held a high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples, to share perspectives and best practices on the realization of the rights of indigenous peoples, including to pursue the objectives of the Declaration. The conclusions of the meeting, reflected in its outcome document,[2] reiterate the commitment of the United Nations system and its Member States towards achieving the ends of the Declaration.

7. In this report, the Special Rapporteur provides some views on the status of implementation of the Declaration, based on the situations observed in country

[1] Mandate established by the Commission on Human Rights in 2001 by its resolution 2001/57. The Human Rights Council by its resolution 6/12 extended the mandate in 2007, adding the task of promoting the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate.

[2] Outcome document of the high-level plenary meeting of the General Assembly known as the World Conference on Indigenous Peoples (General Assembly resolution 69/2).

visits, allegations received by the mandate holder, independent research, and exchanges maintained with States, indigenous peoples and others during the past decade. At the end, some recommendations are presented on necessary steps and areas that require special attention to ensure that indigenous peoples enjoy the rights recognized in the Declaration and relevant international human rights instruments. The Special Rapporteur provides examples and references for the work developed by the mandate holder to support this aim.

## IV. Legal status and aims of the Declaration

8. Although the present report will focus on implementation, the Special Rapporteur would like to reiterate some comments on the legal standing of the Declaration and on the universal human rights principles underlying it. The Declaration sets a clear normative framework for the mandate.[3]

9. The Declaration, as a declaration of the General Assembly, is a standard-setting resolution of profound significance as it reflects a wide consensus at the global level on the minimum content of the rights of indigenous peoples.[4] Many of its articles are an extension of binding standards found in various human rights treaties that have been widely ratified and certain provisions, such as those relating to the protection against racial discrimination, reflect customary international law.

10. The preamble to the Declaration underlines fundamental aims and principles which should guide its interpretation and implementation: the need to overcome and repair the historical denial of the fundamental human rights of indigenous peoples, and the affirmation of the equality of indigenous peoples and individuals to all other peoples and individuals, paired with their right to be different. The Declaration itself can be considered a remedial tool.

11. True reconciliation requires affirmative steps to provide remedy and redress for indigenous peoples. As stated in the Declaration, this is required inter alia for the dispossession of their land, territories and resources, for any form of forced assimilation or integration, for taking cultural, intellectual, religious or spiritual property, for the deprivation of their means of subsistence as well as for the development and for the utilization or exploitation of their mineral, water or other resources.[5] An essential approach for redress in these processes is the consideration of the collective nature of the impact of such violations and therefore the incorporation of adequate collective reparation measures. Without definite measures of remedy, reconciliation cannot be achieved.

12. Furthermore, the Declaration is an instrument aimed at ending the pervasive racism and discrimination still suffered by indigenous peoples in the enjoyment of their human rights. Racism and discrimination are prevalent mindsets and attitudes that prevent the establishment of equal relationships between indigenous peoples and States, and with the society at large.

13. In this regard, the view that the implementation of the rights enshrined in the Declaration amounts to bestowing unjustified privileges on a certain group is a

[3] See A/HRC/9/9 and A/HRC/27/52.

[4] See A/68/317.

[5] United Nations Declaration on the Rights of Indigenous Peoples, articles 8, 11, 20 and 28. The normative interpretation and jurisprudence of human rights treaty bodies and the regional human rights systems provide solid guidance on effective redress measures. See also the Basic Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147, 2005).

serious concern. This view was held by some States after the adoption of the Declaration and, unfortunately, it has been since reiterated by other actors, including international financial institutions, in the framework of discussions on safeguards to ensure respect for the rights of indigenous peoples. This erroneous interpretation has also been expressed with regard to the special measures required to overcome centuries of racism and discrimination.

14. Human rights treaty bodies have specifically addressed the need for special measures when referring to indigenous peoples within the context of monitoring compliance with their respective human rights treaties. The Committee on the Elimination of Racial Discrimination has noted that "the situation of indigenous peoples has always been a matter of close attention and concern. In this respect, the Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination."[6] It has furthermore noted that "States parties should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities".[7]

15. Challenges remain regarding the interpretation of the content of the rights enshrined in the Declaration.[8] Differences in interpretation continue to exist especially in relation to rights to lands and resources; the application of the duty of States to consult with and seek the free, prior and informed consent of indigenous peoples in matters that affect them; and the harmonization of State and customary indigenous governance and justice systems.

16. In this sense, the work of the mandate holder has sought to clarify standards contained in the Declaration, and other relevant existing human rights instruments, both in general and in specific contexts. For instance, after the adoption of the Guiding Principles on Business and Human Rights, the previous Special Rapporteur analysed how indigenous peoples' rights should be interpreted and implemented in the context of business activities affecting them, both in relation to State duties and companies' responsibilities,[9] and developed further in-depth work on the issue focused on the activities of extractive industries.[10] The current Special Rapporteur has provided interpretations of standards in relation to economic, social and cultural rights and sustainable development[11] and to investment agreements,[12] as well as analyses of conservation activities[13] and climate change measures.[14]

17. The interpretative work of the mandate holder, the growing jurisprudence emanating from United Nations human rights bodies and regional human rights systems, including regional human rights courts, together with an intercultural dialogue between States and indigenous peoples, can significantly assist in strengthening the understanding and implementation of the rights contained in the Declaration.

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[6] Committee on the Elimination of Racial Discrimination, general recommendation No. 23.

[7] Committee on the Elimination of Racial Discrimination, general recommendation No. 32.

[8] See A/HRC/27/52 (2014), para. 23; and A/HRC/33/42/Add.3 (mission report of the Special Rapporteur on the Sápmi region, 2016).

[9] See A/HRC/15/37 (2010).

[10] See A/HRC/18/35 (2011); A/HRC/21/47 (2012); and A/HRC/24/41 (2013).

[11] See A/69/267 (2014).

[12] See A/70/301 (2015); and A/HRC/33/42 (2016).

[13] See A/71/229 (2016).

[14] See A/HRC/36/46 (2017).

## V. Assessing progress in implementation

18. Ten years after its adoption, the legal status and aims of the Declaration are now better understood and accepted by Member States and others. The four countries that voted against the Declaration have now reversed their position, and some of the countries that abstained have also made public statements of support. Moreover, States reaffirmed their commitment to take measures to achieve the ends of the Declaration in consultation and cooperation with indigenous peoples at the World Conference on Indigenous Peoples in 2014.[15]

19. Nevertheless, considering the problems witnessed and the information and allegations received, the Special Rapporteur assesses the situation of implementation of the Declaration as one of limited progress. This is particularly worrisome considering the urgency and seriousness of the threats indigenous peoples are facing in many countries, compromising not only their dignity and well-being but their very survival as distinct peoples.

20. Measuring the effective implementation of the Declaration presents important challenges. It is difficult to assess the performance of adopted laws or policies in terms of their contribution to implementing the aims of the Declaration, owing in part to lack of disaggregated data and adequate indicators that are significant in terms of indigenous peoples' rights.[16]

21. The Expert Mechanism on the Rights of Indigenous Peoples of the Human Rights Council undertook a survey of implementation through questionnaires addressed to Member States and indigenous peoples in 2014. In the report summarizing their replies on best practices regarding measures and implementation strategies to attain the goals of the Declaration it is pointed out that the information provided only allowed for a limited assessment of its implementation.[17]

22. The effective implementation of the rights of indigenous peoples requires States to develop an ambitious programme of reforms at all levels to remedy past and current injustices. This should involve all the branches of the State, including the executive, legislative and judiciary, and implies a combination of political will, legal reform, technical capacity and financial commitment.[18] Implementation of the Declaration should be measured against compliance with these requirements, and not on the basis of rhetorical claims of commitment or isolated measures. Moreover, implementation of the Declaration cannot happen without the full and effective participation of indigenous peoples at all levels of decision making.

23. It must be mentioned that the implementation of the Declaration in Asia and Africa, and the work of the mandate holder to promote it, face particular obstacles due to denial by some States of the existence of indigenous peoples within their borders, on the grounds for example that all the population is indigenous to the country. The mandate holder has repeatedly referred to this issue stating that, despite the different terminology employed in many areas, the situation and human rights issues of certain peoples in those regions is a matter of concern for the mandate holder and the provisions of the Declaration apply to them.[19] These populations are

[15] General Assembly resolution 69/2, para. 7.

[16] See A/HRC/27/52 (2014); and A/69/267 (2014).

[17] A/HRC/EMRIP/2014/4.

[18] See A/64/338 (2009).

[19] See A/HRC/27/52 (2014); A/HRC/12/34/Add.3 (mission report of the Special Rapporteur on Nepal, 2009); A/HRC/24/41/Add 3 (report of the Special Rapporteur on the consultation on the situation of indigenous peoples in Asia, 2013); A/HRC/15/37/Add.2 (mission report of the Special Rapporteur on Botswana, 2010); and A/HRC/18/35/Add.5 (mission report of the Special Rapporteur on the Republic of the Congo, 2011).

distinct peoples, with specific cultures and relation to certain lands and territories, and have been subject to marginalization. The problems they suffer, related to their group identity, are similar to those of peoples all over the world that identify as indigenous, and are the types of problems that the Declaration seeks to resolve as a remedial instrument. The work of the African Commission on Human and Peoples' Rights, particularly its Working Group on indigenous populations/communities, has been instrumental in advancing a positive dialogue on the recognition of indigenous peoples in the African region.[20]

24. The sections that follow contain comments on progress made and challenges remaining within three key spheres that the mandate holder has had the opportunity of assessing in country missions, working visits, exchanges with State representatives, indigenous peoples and others, and through communications work, namely, the development of an adequate legal framework, the adoption and implementation of enabling public policies and the establishment of adequate institutional arrangements.[21]

## VI. Necessary legal reforms

25. The existence of an adequate legal framework, consistent with international human rights standards, particularly the Declaration, is not per se a guarantee of implementation, but is an important step to establishing a solid basis to build the necessary changes. As noted by my predecessors, even in countries with well-developed enabling legal frameworks on the rights of indigenous peoples, there may be "implementation gaps" that impede effective actions.[22]

26. The legal framework may consist of a combination of constitutional recognition and specific legal instruments devoted to the rights of indigenous peoples in general or on different sectoral issues. In some countries, such as Canada, New Zealand and the United States of America, treaties were signed between indigenous peoples and States which provide a legal basis for domestic recognition of indigenous peoples' rights.[23] There is an ongoing discussion of the possibility of development of a treaty in Australia.[24] There are also different kinds of agreements

[20] *Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities*, submitted in accordance with the "Resolution on the Rights of Indigenous Populations/Communities in Africa" adopted by the African Commission on Human and Peoples' Rights at its 28th ordinary session (2005).

[21] Since 2007, mandate holders have made official visits to Brazil (2008, 2016), Nepal (2008), Australia (2009, 2017), Botswana (2009), Colombia (2009), the Russian Federation (2009), Guatemala (2010), New Zealand (2010), the Republic of the Congo (2010), the Sápmi region in Norway, Sweden and Finland (2010, 2015), Argentina (2011), New Caledonia, France (2011), El Salvador (2012), Namibia (2012), the United States of America (2012, 2017), Canada (2013), Panama (2013), Peru (2013), Paraguay (2014) and Honduras (2015); and working visits, among others, to Ecuador (2008, 2009), Chile (2009), Panama (2009), Peru (2009), Costa Rica (2011), Suriname (2011) and Honduras (2015), in addition to attending numerous meetings and events in different countries by invitation of Government authorities, the United Nations system, academia, indigenous peoples and civil society organizations. All official country mission reports of mandate holders are available from www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/CountryReports.aspx.

[22] See A/HRC/9/9 (2008); and E/CN.4/2006/78.

[23] See A/HRC/18/35/Add.4 (mission report of the Special Rapporteur on New Zealand (2011), analysing the settlement procedure for the Treaty of Waitangi); A/HRC/27/52/Add.2 (mission report of the Special Rapporteur on Canada (2014), on new agreements and treaty settlements); and A/HRC/21/47/Add.1 (mission report of the Special Rapporteur on the United States of America (2012), section on broken treaties).

[24] See A/HRC/36/46/Add.2 (mission report of the Special Rapporteur on Australia (2017), on the outcome of a referendum consultation indicating preference for a treaty).

between indigenous peoples and the State in certain countries. As stated in the Declaration, treaties, agreements and other arrangements between States and indigenous peoples are the basis for a strengthened partnership between indigenous peoples and States and should be honoured and respected.[25]

27. If the Constitution, as the foundational law, recognizes the existence and rights of indigenous peoples, then this reflects a commitment of the whole society within the country. A number of countries recognize the existence and certain rights of indigenous peoples within their Constitution.[26] While most of these recognitions predate the adoption of the Declaration, examples after 2007 include the Constitutions of Ecuador (2008), Bolivia (2009), Kenya (2010),[27] Sweden (2011)[28] and El Salvador (2014). Some countries have amended their Constitutions to at least recognize the multi-ethnic, pluricultural nature of their societies (Costa Rica, 2015).

28. Discussions on recognition of indigenous peoples and their rights in the Constitution are ongoing and at the federal level in Australia, Chile and Guatemala.[29] In February 2017, the Special Rapporteur together with other special procedures mandate holders wrote to the Government of Guatemala urging it, in the context of the ongoing parliamentary debate, to support amendments to the Constitution which would recognize the indigenous justice system.[30]

29. Within the Commonwealth of Australia, each of the six States already have Constitutions that recognize Aboriginal peoples and the Queensland Constitution specifically recognizes Torres Strait Islander peoples as well.[31] The Constitution of Mexico City, adopted in February 2017, refers to the rights of indigenous peoples within an urban setting, explicitly mentions the Declaration and adopts it as its legal framework.[32]

30. Some countries have enacted general laws on the rights of indigenous peoples. Most of the instances also predate the Declaration, and should be reviewed

[25] United Nations Declaration on the Rights of Indigenous Peoples, preamble and article 37. New agreements and constructive arrangements include, for instance, the 1995 Acuerdo sobre identidad y derechos de los pueblos indígenas as part of the peace agreements between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca; the 1996 Acuerdos de San Andrés sobre derechos y cultura indígena between the Government of Mexico and the Ejército Zapatista de Liberación Nacional; or the 1997 Chittagong Hills Tract Accord between the Government of Bangladesh and the Parbatya Chattagram Jana Samhati Samiti, whose implementation has been followed by the mandate holder.

[26] That is the case with many Latin American Constitutions (Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru and Venezuela (Bolivarian Republic of)). Further examples include Canada, Finland, Norway, the Russian Federation and Sweden. The Constitution of the Philippines recognizes indigenous cultural communities. The Federal Constitution of Malaysia incorporates special provisions for the natives of Sabah and Sarawak, including recognition of native customary law. The Constitution of India recognizes scheduled tribes and tribal councils. The Indonesian Constitution recognizes traditional communities (article 18 B (2)).

[27] The 2010 Constitution of Kenya, while not using the term indigenous peoples, defines "marginalized communities" in positive language, and includes articles on their language and culture, representation, dual citizenship for peoples in cross-border situation, such as the Maasai, affirmative action measures, governance, communal land recognition and avenues for redress of historical injustices.

[28] See A/HRC/33/42/Add.3 (mission report of the Special Rapporteur on the Sápmi region, 2016).

[29] See A/HRC/12/34/Add.6 (mission report of the Special Rapporteur on Chile, 2009).

[30] Special procedures joint communication (OL GTM 1/2017), available from https://spcommreports.ohchr.org.

[31] See A/HRC/36/46/Add.2 (mission report of the Special Rapporteur on Australia, 2017).

[32] See www.cdmx.gob.mx/storage/app/uploads/public/589/746/ef5/589746ef5f8cc447475176.pdf.

according to its standards,[33] but encouraging new legislation has since been adopted. In October 2007, the Senate of Bolivia sanctioned a bill transposing the Declaration within the Bolivian legal system,[34] making it a law directly applicable by all national courts. Law number 5 of 25 February 2011 on the protection and promotion of the rights of indigenous populations in the Congo constitutes a good practice in this regard within the African region.[35]

31. Certain countries have developed sectoral laws on specific indigenous peoples' rights, such as in the fields of language, health and education, or established processes for participation or land rights recognition. The elaboration of legislation to operationalize the State duty to consult indigenous peoples is an ongoing process in Latin America. Peru adopted a law to this effect[36] and discussions on potential new legal instruments are taking place, for instance, in Colombia, Costa Rica, Guatemala and Honduras. Legislation addressing indigenous peoples in particular circumstances, such as isolated indigenous peoples and indigenous peoples in recent contact has also been developed in Bolivia, Ecuador and Peru.[37] General sectoral laws in some countries consider specific measures related to indigenous peoples.[38] Dialogue processes for the development of new legislation are taking place in several countries, including transnational instruments as the Nordic Sami Convention.[39]

32. Furthermore, Nepal (2007), Spain (2007), Chile (2008), the Central African Republic (2010) and Nicaragua (2010) have ratified the Indigenous and Tribal Peoples Convention, 1989 (No. 169) of the International Labour Organization (ILO) during the past decade.

33. The recognition of the pre-existing rights of indigenous peoples in the legal system of a country is generally a constructive step, particularly when it responds to the demands of indigenous peoples and is conducted in cooperation with them and with their full and effective participation. The mandate holder has consistently recalled that such recognition should be accompanied by a necessary review of all domestic legislation to ensure coherence with international human rights standards on the rights of indigenous peoples, particularly the Declaration. In some countries

[33] See, for example, Philippines, Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371); Nepal, National Foundation for the Development of Indigenous Nationalities Act of 2002 (NFDIN Act); and India, Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006.

[34] Law No. 3760, of 7 November 2007, which introduced the 46 articles of the United Nations Declaration on the Rights of Indigenous Peoples into the legislation of Bolivia.

[35] See A/HRC/18/35/Add.5 (mission report of the Special Rapporteur on the Republic of the Congo, 2011).

[36] Law No. 29785 on the right to prior consultation of indigenous peoples, recognized in Convention No. 169 of the International Labour Organization (ILO), and Supreme Decree No. 001-2012-MC.

[37] Political Constitution of Ecuador, 2008, article 57; Constitution of the Plurinational State of Bolivia, 2009, articles 30 and 31; Law reforming the Penal Code of Ecuador, including the crimes of genocide and ethnocide, 9 March 2009 (articles 138, 216 and 353 bis); Law No. 28736 for the protection of indigenous peoples in isolation and recent contact in Peru, 2006, and Supreme Decree No. 008-2007 (regulation); Law for the protection of highly vulnerable indigenous nations and peoples in Bolivia (2013). See also the presentation by the Special Rapporteur, "Pueblos indígenas en aislamiento en el marco de los estándares internacionales de derechos humanos", 22 November 2016, available from http://unsr.vtaulicorpuz.org/site/images/docs/special/2016-11-22-unsr-intervencion-ecuador-pueblos-en-aislamiento.pdf.

[38] Communication of the Special Rapporteur on the Cambodian Land Law (2001) regarding communal land rights (see A/HRC/12/34/Add.1, 2009); communication of the Special Rapporteur on the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act of 2006 of India (IND 9/2013).

[39] See A/HRC/33/42/Add.3 (mission report of the Special Rapporteur on the Sápmi region, 2016).

where legislation recognizing the rights of indigenous peoples has been adopted, there are glaring inconsistencies between such legislation and existing regulations concerning investments, extractive activities such as mining, infrastructure development, forestry, agriculture or conservation measures.[40]

34. During the past decade, the mandate holder has responded to requests by State officials and indigenous peoples to provide assistance in the development of constitutional and legal reforms to harmonize the domestic legal frameworks with the applicable international standards on the rights of indigenous peoples. Regarding constitutional reforms, the mandate holder has provided advice in the cases of Ecuador and Chile.[41] Regarding the regulation of the State duty to consult, the mandate holder has provided interpretative comments on the nature of this duty, and specific observations at the request of Governments on the development and contents of related legal instruments. Technical advice has also been provided regarding the legal recognition of indigenous justice systems and their articulation with ordinary justice, and on legislation to protect indigenous lands.

35. A positive trend has developed during the past 10 years with the use of the Declaration as a source of law in regional and national courts.[42] Gradually, the Declaration is being incorporated into jurisprudence and cited as an authoritative legal source in the interpretation of the content of indigenous rights. Some Constitutional and Supreme Courts have also explicitly recognized the Declaration in developing jurisprudence at the domestic level.[43]

36. Particularly significant are the developments in the Inter-American and African human rights systems. The mandate holder has consistently collaborated with these regional systems, including as expert witness at the request of the Inter-American Court of Human Rights.[44]

## VII. Translation into effective policies

37. An important element for operationalizing the recognition of the human rights of indigenous peoples is the adoption of adequate public policies. Both before and after the adoption of the Declaration, public policies addressing indigenous peoples were adopted in several countries. The mandate holder has had the opportunity to receive information on these issues during the country visits, has identified best

[40] Comments of the mandate holder can be found in the mission reports on visits to, for example, Argentina; Colombia; Guatemala; New Zealand; and the Sápmi region. See also A/70/301; A/HRC/33/42; and A/71/229.

[41] See A/HRC/9/9/Add.1 and A/HRC/15/37/Add.7 on Ecuador; and A/HRC/12/34/Add.6 on Chile.

[42] The Inter-American human rights system has interpreted the American Convention and the American Declaration in the light of ILO Convention No. 169 and, since 2007, of the Declaration. See Inter-American Court of Human Rights, *Kaliña and Lokono Peoples v. Suriname*, judgment of 25 November 2015, and a compilation of relevant jurisprudence, available from www.corteidh.or.cr/sitios/libros/todos/docs/indigenas.pdf. On indigenous rights in the African human rights system, see *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v. Kenya*, 276/2003, African Commission on Human and Peoples' Rights, 4 February 2010; and *African Commission on Human and Peoples' Rights v. Republic of Kenya* (the Ogiek peoples), application No. 006/2012, judgment of 26 May 2017.

[43] Constitutional Court of Colombia, judgement T-129/11 (2011). The Supreme Court of Belize applied the Declaration in the case of the Maya people of Belize already in 2007. Further overview of jurisprudence citing the Declaration is available in the report of the Expert Mechanism on the Rights of Indigenous Peoples (A/HRC/36/56, 2017).

[44] For examples of mandate holder cooperation with the Inter-American system, see A/65/264, para. 8; A/66/288, para. 26; A/68/317, paras. 53-54; and A/HRC/12/34, para. 16. The mandate holder has attended sessions of the African Commission on Human and Peoples' Rights.

practices and has made country-specific recommendations. The respective Special Rapporteurs have expressed their concerns over the lack of access by indigenous peoples to appropriate basic public services as well as the distressing disparities between the overall social and economic condition of indigenous peoples and that of the non-indigenous population in both developing and developed countries.[45]

38. Adequate policies must meet two basic criteria: they should conform to the international human rights standards on indigenous peoples; and they should be developed in cooperation with them and with their full participation, with the aim of strengthening their self-determination.[46] This may require a reinterpretation of the concept of development in the light of the Declaration, ensuring that the agency of indigenous peoples as development actors is recognized in the reconceptualization of the issues classically addressed by public policies such as economic development, health or education. Public policies that do not conform with international human rights standards on the rights of indigenous peoples are likely to further violate those rights.

39. Within this context, it is essential to consider the link between poverty, in all its dimensions, and the violation of the right to self-determination. It is also essential to consider the centrality of the rights of indigenous peoples to their lands, territories and resources to ensuring their enjoyment of all their human rights. In this sense, it must be stressed that there has been more progress in the adoption of measures related to certain social and cultural rights than in those concerning effective recognition and respect of indigenous peoples' rights to self-government and to their lands, territories and natural resources.

40. Public policies should address the underlying causes of poverty and marginalization that indigenous peoples suffer as a result of the denial of their rights. They should also be considered as elements of the coordinated and systematic action States should develop to ensure that indigenous peoples enjoy their collective and individual human rights, and not as marginal, stand-alone initiatives dependent on available funding. The mandate holder has observed positive examples of public policies to implement indigenous rights on different sectoral issues, such as for example the National Aboriginal and Torres Strait Islander Health Plan 2013-2023 which affirms that it adopts a human rights-based approach informed by the Declaration.[47] Other examples include the Whanau Ora policy in New Zealand; the bilingual intercultural education programme in Panama and the policies for the protection of indigenous peoples in isolation and recent contact in Bolivia and Ecuador. In El Salvador the recently adopted national policy on indigenous peoples considers the Declaration as its framework. Canada is undertaking a review of its policies to ensure coherence with the Declaration, and dialogue processes with indigenous peoples on public policies are ongoing in Costa Rica or Paraguay.

41. There is a continuous need to review policies and align them with the Declaration. The commitment made at the World Conference on Indigenous Peoples by Member States to develop and implement, in cooperation with indigenous peoples, national action plans, strategies and other measures to achieve the ends of the Declaration[48] provides an opportunity to reverse the current situation and

[45] See for example mission reports of the Special Rapporteur on visits to Colombia (2009); Nepal (2009); Australia (2010, 2017); the Republic of the Congo (2011); New Zealand (2011); the United States of America (2012); and Canada (2014).

[46] See A/HRC/27/52; and A/65/264.

[47] See www.health.gov.au/internet/publications/publishing.nsf/Content/oatsih-healthplan-toc~framework.

[48] General Assembly resolution 69/2, paras. 7 and 8.

develop adequate public policies to comply with this commitment. For some countries, the role of the donor community in this regard is important. Cooperation and aid should explicitly conform to the Declaration as the standard to be applied in the activities supported in relation to indigenous peoples. Several States have developed guidelines and other instruments framing their aid and cooperation activities within the Declaration, such as Australia, Denmark, Germany, Spain and Switzerland.

42. In line with the Declaration, the mandate holder has consistently underlined the key right of indigenous peoples to decide their own development path, and to maintain their own systems and institutions, including in the fields of economic activities, education, health and activities related to multilateral environmental agreements.[49] Therefore, priority should be given to supporting indigenous peoples' own initiatives.

43. While there are some good practices of indigenous-led initiatives supported by States, it remains a serious concern that certain traditional livelihoods and indigenous economic practices are still disregarded and marginalized in many countries, in disregard of article 20 of the Declaration. This is the case with traditional pastoralism in eastern Africa, hunting and gathering, traditional agricultural practices such as shifting cultivation in South-East Asia, small-scale traditional fishing in many coastal areas, or reindeer-herding in the Arctic. Moreover, the contributions of these indigenous livelihoods and economic activities to the general economy are not adequately valuated and taken into account. The right of indigenous peoples to continue practising their traditional livelihoods is often violated in contrast with the protection of the rights and claims of those dominating the national economy.

## VIII. Institutional framework

44. Many countries have established national institutions devoted to indigenous peoples in order to implement relevant legislation and policies, including in the countries visited by the mandate holder during the past decade. In spite of the commitment by staff, and the constructive and proactive role these institutions could play, many have a low rank among State institutions and are underresourced. Thus, the capacities of these bodies to perform an effective role in the protection and implementation of the fundamental rights of indigenous peoples are severely limited.[50] Some of these institutions incorporate indigenous staff and have developed good participatory mechanisms for indigenous peoples but, in other cases, there is no participation of indigenous peoples at all, or the mechanisms in place to facilitate such participation are not adequate.

45. The establishment of special departments within different Ministries focused on indigenous peoples and parliamentary commissions on indigenous issues can be instrumental in the development of appropriate measures to achieve the ends of the Declaration. Within the justice system, some countries have established specialized Public Prosecutor's Offices which play an important role in trying to ensure access

[49] See for example mission reports of the Special Rapporteur on the Republic of the Congo (2011); Namibia (2013); Paraguay (2015) and the Sápmi region (2016). On State control of indigenous economic activities for environmental reasons see, for example, the communications sent by the Special Rapporteur to the Russian Federation (see A/HRC/27/52/Add.4) and Ethiopia (see A/HRC/9/9/Add.1).

[50] Examples include Fundação Nacional do Índio (FUNAI) in Brazil; Instituto Paraguayo del Indígena (INDI) in Paraguay; Department of Indigenous and Afro-Honduran Peoples in Honduras; and Instituto Nacional de Asuntos Indígenas (INAI) in Argentina.

to justice for indigenous peoples.[51] In several countries joint bodies, such as dialogue round tables, with participation of indigenous peoples and State institutions, have been created: they either deal with specific matters[52] or exist as permanent mechanisms.[53] Provided they comply with the basic requirements of full and effective participation by indigenous peoples in decision-making and respect for indigenous appointment processes, these bodies can play a decisive role in advancing respectful and continuous intercultural dialogue between indigenous peoples and States that may bring about the needed changes. They can also be instrumental in preventing and solving conflict situations.

46. Even when special institutions devoted to indigenous peoples exist, lack of adequate coordination and lack of awareness and capacity among State institutions with regard to indigenous issues are common problems cited across countries in terms of enforcing legislation and other measures. The mandate holder has repeatedly recommended that States develop specialized training programmes for government officials as well as members of the legislative branch and the judiciary on the rights of indigenous peoples. Members of the police force, the military and penitentiary staff should also receive training. Indigenous peoples should be involved in designing such programmes and adequate technical and financial resources for these should be provided.

47. Another common concern is how the governmental institutions dealing with indigenous peoples are presented as being indigenous peoples' representative institutions. The mandate holder has stressed the right of indigenous peoples to maintain their own institutional structures and political systems and to participate in decision-making through their own representatives chosen by themselves through their own procedures, as set out in article 18 of the Declaration. Their full and effective participation in the public life of the State should be ensured.

48. Moreover, the collective right of self-determination may be expressed in different forms of self-governance and autonomy.[54] Very diverse good practices regarding the recognition of indigenous governing institutions can be found in different countries, depending on historical and political factors.[55] In 2009 Denmark adopted the Act on Greenland self-government. Under the preamble, the people of Greenland are recognized as a people under international law with the right to self-determination.

49. In other countries, indigenous peoples are developing their own proposals of autonomy in accordance with the Declaration, such as the Autonomous Territorial Government of the Wampis Nation in Peru. In Bolivia, the first autonomous local government took office in the province of Charagua in January 2017. In addition, new institutions have been created, such as the Sami Parliaments in the Nordic countries, the National Congress of Australia's First Peoples, and numerous

[51] Examples include Brazil, Honduras and Paraguay.

[52] For example, Mesa sobre consulta in Costa Rica; and Comisión multisectorial sobre acuerdos bloque 192 in Peru.

[53] For example, Mesa Permanente de Concertación con los Pueblos y Organizaciones Indígenas in Colombia; and Mesa Permanente sobre Derechos de los Pueblos Indígenas in El Salvador.

[54] United Nations Declaration on the Rights of Indigenous Peoples, articles 3, 4 and 5.

[55] See A/HRC/18/35/Add.4 (2011); A/HRC/21/47/Add.1 (2012); and A/HRC/27/52/Add.2 (2014) on treaty-based recognition. See also A/HRC/15/37/Add.3 (2010) and A/HRC/27/52/Add.1 (2014) for good practices in Latin America; and A/HRC/15/37/Add.6 (2010) and A/HRC/33/42/Add.3 (2016) for Nordic countries. For Africa, see A/HRC/15/37/Add.2 (2010); A/HRC/18/35/Add.5 (2011); and A/HRC/24/41/Add.1 (2013). In Asia, Malaysia recognizes certain levels of governance for natives of Sabah and Sarawak, while in India the Panchayat (Extension to the Scheduled Areas) Act, 1996, grants local decision-making power to the tribal councils.

indigenous representative organizations. Nevertheless, challenges still remain for the recognition of indigenous peoples' own institutions and organizations in many countries, including restrictive legalisation and registration processes.[56]

50. Finally, independent national human rights institutions have a critical role to play with regard to promoting and monitoring national laws and policies, their harmonization with international human rights standards, including the Declaration, and State compliance. Some independent national human rights institutions have incorporated indigenous members, or sections on indigenous issues, have developed good monitoring practices, and have promoted dialogue on the rights of indigenous peoples in their countries.[57] Countries where independent national human rights institutions have promoted the rights of indigenous peoples include Colombia, Guatemala, Peru, Australia, Indonesia, Malaysia, Nepal, New Zealand, the Philippines, Kenya, Namibia and the United Republic of Tanzania.

# IX. Priority areas that require urgent attention

51. Notwithstanding the achievements mentioned above in terms of legal, policy and institutional frameworks, there are specific priority areas that present serious challenges for the fulfilment of the aims of the Declaration. This section provides a brief summary of those priority areas in which progress is more urgently needed, including references to guidance provided by the mandate holder to this effect.

## A. Lands, territories and resources

52. The Declaration contains a set of collective rights that are fundamental for the survival of indigenous peoples as distinct peoples, as underlined by international, regional and national law and jurisprudence. These are their right to self-determination and the related rights over their lands, territories and natural resources, on which the enjoyment of the whole panoply of their human rights depends. The Declaration states the "urgent need" to respect and promote the inherent rights of indigenous peoples, "especially their rights to their lands, territories and resources".[58] Therefore, it is a serious concern that the most common complaints brought to the attention of the Special Rapporteur are precisely violations of indigenous peoples' collective rights to their lands, territories and resources.

53. As already mentioned, several countries have developed legal instruments and administrative and other measures to recognize indigenous rights to land and resources, including processes of land demarcation, title-clearing, dispute settlement, and others. Yet, even in those countries, implementation of legislation and policies is inadequate and indigenous peoples continue to be dispossessed of their traditional lands and resources and forcibly displaced, including by State-sponsored infrastructure, agribusiness, extractive projects and conservation

[56] See A/HRC/21/47/Add.2 (2012); A/HRC/24/41/Add.1 (2013); and A/HRC/27/52/Add.4, communication with Bolivia.

[57] See A/HRC/18/35/Add.4; A/HRC/27/52/Add.2; and A/HRC/36/46/Add.2.

[58] United Nations Declaration on the Rights of Indigenous Peoples, preamble.

measures.[59] The consequences of such violations on indigenous peoples, as observed by the mandate holder in a wide range of countries across the world, continue to result in the expropriation of land, forced evictions, and the denial of self-governance, as well as discrimination against traditional livelihoods and loss of culture and spiritual sites.

54. In several regions, large-scale land-grabbing is escalating and producing serious human rights violations and direct attacks against indigenous leaders and community members who seek to defend their land rights. Indigenous peoples are being threatened, arrested and prosecuted and, in the worst situations, they become the victims of extrajudicial executions.[60]

55. The nature of the allegations received by the mandate holder indicates an increase in violence against indigenous peoples when they defend their basic human rights, including their rights to lands and resources. Within this context, the use of anti-terrorist legislation, the terming of human rights defence as a criminal activity, and impunity when crimes against indigenous peoples are committed remain very serious concerns. In the past 10 years the mandate holder has addressed, often together with other special procedures mandate holders, many cases of violence against indigenous peoples, their leaders and representatives. This has been undertaken through the communications procedure and the release of public statements.[61] The mandate holder has also sought to address these situations by engaging the Governments in constructive dialogues and by undertaking working visits to examine the issues in more depth. The Special Rapporteur intends to develop further research on this issue but would like to emphasize that the underlying reason for the key problems seen in these cases is the lack of observance of indigenous land, natural resources and related rights recognized in the Declaration and other human rights instruments.

56. The mandate holder has provided numerous recommendations in country reports and in communications on measures and actions to be adopted to realize indigenous peoples' land and resources rights. These include the development of an adequate legal framework in accordance with international human rights standards;

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[59] See, for example, with regard to hydroelectric dams: Lao People's Democratic Republic (A/HRC/9/9/Add.1 and A/HRC/12/34/Add.1); Niger (A/HRC/9/9/Add.1); Panama (A/HRC/9/9/Add.1, A/HRC/12/34/Add.1 and A/HRC/12/34/Add.5); Ethiopia (A/HRC/12/34/Add.1, A/HRC/19/34 and Corr.1 and A/HRC/27/52/Add.4); India (A/HRC/12/34/Add.1); Costa Rica (A/HRC/27/52/Add.4); Guatemala (A/HRC/18/51 and Corr.1 and A/HRC/27/52/Add.4, communication No. GTM 4/2013); Brazil (A/HRC/12/34/Add.2 and A/HRC/33/42/Add.5); Paraguay (A/HRC/30/41/Add.1); and Honduras (A/HRC/33/42/Add.2). On the impacts of mining, hydrocarbons and similar projects: Canada (A/HRC/12/34/Add.1); India (A/HRC/12/34/Add.1); Kenya (A/HRC/27/52/Add.4, communication No. KEN 7/2013); Suriname (A/HRC/27/52/Add.4, communications Nos. OTH 4/2013 and 8/2013); Australia (A/HRC/32/53, communication No. AUS 2/2016). In relation with conservation activities, see A/71/229. On forced displacement, see A/HRC/12/34/Add.1 and A/HRC/21/47/Add.2.

[60] In 2016-2017, the mandate holder sent communications expressing concerns over allegations of such violations inter alia in Brazil, Colombia, Ecuador, Guatemala, Honduras, Paraguay, Peru, Ethiopia, Kenya, the United Republic of Tanzania, India, Indonesia, the Philippines and the United States of America, available from https://spcommreports.ohchr.org/.

[61] See A/HRC/9/9/Add.1 (Chile (see also A/HRC/19/44, communication No. CHI 1/2011) and New Zealand) on anti-terrorist laws; A/HRC/9/9/Add.1 (Colombia, Ecuador, Kenya, Malaysia (see also A/HRC/12/34/Add.1), Mexico (see also A/HRC/12/34/Add.1), Rwanda and United Republic of Tanzania); A/HRC/12/34/Add.1 (Chile, Colombia, Guatemala, India, Niger, Papua New Guinea, Philippines and Viet Nam); A/HRC/19/44 (Peru, Guatemala and Brazil); A/HRC/20/30 (Costa Rica, communication No. CRI 1/2012); A/HRC/27/52/Add.4 (Argentina, Bangladesh, Brazil, Cameroon, Canada, Chile, Colombia, Ecuador, Honduras and United Republic of Tanzania). See also A/HRC/12/34/Add.2 (2009); A/HRC/15/37/Add.3 (2010); A/HRC/21/47/Add.2 (2012); A/HRC/33/42/Add.1 (2016); and A/HRC/33/42/Add.2 (2016).

the establishment of accessible, prompt and effective procedures to process land titles; the review of laws on expropriation; adequate mechanisms to resolve land disputes; ensuring effective protection from encroachment, including through early warning systems; and the prohibition of forced evictions. National and regional human rights courts have elaborated jurisprudence that provides a solid basis on the ways to realize indigenous peoples' rights to their lands and resources, including appropriate remedies when those rights have been violated. The lack of compliance with such court decisions remains a concern.

## B. Access to justice and recognition of indigenous justice systems

57. Many of the obstacles indigenous peoples face in the recognition of their rights to land and resources are linked to undue delays in the existing procedures and their inability to access justice, particularly when rights of third parties are involved. Access to justice remains elusive for indigenous peoples, both because of the numerous obstacles they face to effectively access the general justice systems and for the lack of adequate recognition of their own customary laws and jurisdiction.[62]

58. An important component of the international standard of access to justice applicable to indigenous peoples is the due consideration of their customary norms and governance as well as of the potential barriers they might face due to language and cultural differences, geographical distance and their social and economic situation. Among these obstacles are insufficient resources to hire lawyers, absence of interpretation in their languages during court hearings, and the inaccessibility of courts as these are usually located in urban centres.

59. Without consideration of these potential barriers, indigenous peoples face violations of due process when they do not understand legal procedures and when courts are inaccessible. Persistent racism, including in the judicial system, is clearly an obstacle to obtaining justice.[63] This is undoubtedly a factor in the concerning overrepresentation of indigenous persons, including women and young people, in jail.[64] Aggressive litigation, particularly by private parties who seek access to indigenous lands and resources, can be used as a way to hinder effective justice or remedy.[65]

60. However, encouraging examples of access to justice have been observed by the mandate holder. These include the admission of cultural expert testimonies, the incorporation of indigenous justice operators within the national justice systems, the use of indigenous interpreters, capacity-building of judges and other justice operators, and the incorporation of Aboriginal law and relevant international standards in law schools.

61. The maintenance of indigenous peoples' own customary legal institutions and norms is an essential aspect of their right to self-determination.[66] Indigenous jurisdictional functions have been recognized at the national level in several countries.[67] Nevertheless, in spite of increasing recognition of the value of customary law and indigenous justice systems, and certain steps taken towards legal

[62] See http://unsr.vtaulicorpuz.org/site/index.php/en/statements/116-indigenous-jurisdiction.

[63] See A/HRC/18/35/Add.4; A/HRC/27/52/Add.2; and A/HRC/36/46/Add.2.

[64] See A/HRC/18/35/Add.4, paras. 62-63 and 83 (New Zealand); and A/HRC/27/52/Add.2, paras. 32-33 (Canada).

[65] See, for example, communication to Peru No. PER 1/2016.

[66] United Nations Declaration on the Rights of Indigenous Peoples, article 40; ILO Convention No. 169, article 9; A/HRC/15/37/Add.7; A/HRC/18/35/Add.6; and A/71/229.

[67] Examples include Colombia, Paraguay or Ecuador and Malaysia.

pluralism, implementation of indigenous jurisdiction is still contested. Much more needs to be done in terms of both recognition and harmonization with the national justice systems. An intercultural dialogue and understanding between State and indigenous justice authorities is vital, taking into account indigenous good practices.

### C. Consultation and free, prior and informed consent

62. Consultation and free, prior and informed consent are essential safeguards that help to realize the substantive human rights of indigenous peoples. Thus, adequate implementation of the State duty to consult and obtain consent must ensure realization of those fundamental rights. There are different ways in which consultation and consent can be operationalized and this is not just limited to the adoption of specific legislation. In cases when States decide to develop laws to implement this duty, an adequate process has to be established so that indigenous peoples fully participate in the drafting and adoption of such measures. The rights to consultation and consent should not be regarded as stand-alone rights, as these are closely linked to other rights such as the right to self-determination, the right to lands, territories and resources and the right to development.

63. Over the past decade, the mandate holder has received many complaints and requests for technical support regarding the implementation of the State duty to consult and obtain the free, prior and informed consent of indigenous peoples before the adoption of legal, administrative and policy measures that affect them. Commonly, the complaints received are related to the lack of effective implementation of the rights to consultation and consent in the context of plans for natural resource development and investment projects affecting indigenous peoples' lands and resources.

64. In response, the mandate holder has provided detailed comments and recommendations to help to clarify and implement these standards in general and specific cases, including on "consultation on consultation" processes to decide on the measures that could be best suited to ensuring respect for fundamental rights in accordance with international human rights standards, particularly the Declaration. Advice has been provided through participation in meetings and seminars, communications, visits and reports, including on legal standards applicable to projects and activities that affect indigenous peoples' lands, territories and resources.[68]

## X. Implementation at the United Nations level

65. As the Declaration points out, the United Nations system has an important and continuing role to play in promoting and protecting the rights of indigenous peoples.[69]

66. United Nations human rights treaty bodies have referred to the Declaration as an authoritative source on State obligations regarding indigenous peoples' rights in their assessments of compliance under the various treaties. Observations and recommendations by the human rights treaty bodies provide valuable insight on the implementation of the Declaration in specific contexts and situations.

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[68] See A/HRC/9/9/Add.1; A/HRC/12/34; A/HRC/12/34/Add.6; A/HRC/15/37; A/HRC/15/37/Add.8; A/HRC/18/35/Add.3; A/HRC/18/35/Add.8; A/HRC/21/47; A/HRC/27/52/Add.2; A/HRC/33/42/Add.2; and A/HRC/36/46/Add.1. See also http://unsr.vtaulicorpuz.org/site/index.php/en/statements/166-consultation-and-consent; and http://unsr.vtaulicorpuz.org/site/index.php/en/documents/special/172-comentarios-consulta-honduras.

[69] United Nations Declaration on the Rights of Indigenous Peoples, twentieth preambular paragraph and articles 41 and 42.

67. A positive development is that in the context of the universal periodic review the Declaration has been referred to as an instrument to measure how Governments adhere to international human rights standards.

68. Further participation and involvement of indigenous peoples in the work of these bodies and procedures would help to increase awareness of the Declaration.

69. Among the gains achieved after the Declaration came into being is the adoption of policies and guidelines on indigenous peoples by several agencies, programmes and funds and other intergovernmental bodies. In 2008, the United Nations Human Settlements Programme (UN-Habitat) adopted its "Policy guide to housing of indigenous peoples in cities". The United Nations Development Group adopted its "Guidelines on indigenous issues" in 2009, the same year as the International Fund for Agricultural Development adopted its policy of engagement with indigenous peoples. The Food and Agriculture Organization of the United Nations followed suit and adopted its policy on indigenous and tribal peoples in 2010. The United Nations Environment Programme finalized its "Policy guidelines on indigenous peoples" in 2012.

70. Multilateral environmental agreements should also consider the Declaration as the framework when adopting decisions which affect indigenous peoples. Good decisions have emerged from the sessions of the Conferences of the Parties to the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change, and there are positive practices in terms of creating spaces for indigenous peoples within the bodies of these Conventions. For example, under the Convention on Biological Diversity there is a Working Group on article 8 (j) on the traditional knowledge of indigenous peoples and local communities. Since 2007, the Conference of the Parties to the Convention on Biological Diversity has noted the existence of the Declaration in decisions and has adopted guidelines relevant for indigenous peoples. The Conference of the Parties to the Convention on Climate Change, at its twenty-first session, recognized the need to strengthen knowledge, technologies, practices and efforts of local communities and indigenous peoples related to addressing and responding to climate change, and established a platform for the exchange of experiences and sharing of best practices on mitigation and adaptation in a holistic and integrated manner.[70]

71. The Special Rapporteur has engaged with the Conferences of the Parties and intersessional meetings of the Convention on Biological Diversity and the Convention on Climate Change to advocate for the recognition of the Declaration, the inclusion of safeguards and the adoption of the human rights-based approach. This is required in order to protect indigenous peoples' rights and recognize the contributions of indigenous peoples' traditional knowledge in achieving the aims of the Conventions.

72. The mandate holder has emphasized the importance of including the economic, social and cultural rights of indigenous peoples in the Sustainable Development Goals,[71] and advocated, jointly with other special procedures mandate holders and other United Nations bodies, for indigenous peoples' rights, and for the inclusion of a human rights-based approach in the 2030 Agenda for Sustainable Development.[72] While the references to indigenous peoples remain limited, it is encouraging that the 2030 Agenda and the Sustainable Development Goals set targets and indicators relevant for indigenous peoples. The long-standing appeal of

[70] Decision 1/CP.21, para. 135 (see FCCC/CP/2015/10/Add.1).

[71] See A/69/267 (2015).

[72] General Assembly resolution 70/1. See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=14888&LangID=E; and www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=20262&LangID=E.

indigenous peoples to Governments and the United Nations agencies to disaggregate data on indigenous peoples has not yet happened in a satisfactory manner. This remains a major challenge in the implementation and the monitoring of the Sustainable Development Goals in the context of indigenous peoples.

73. The Special Rapporteur has also engaged with members of the Board and the secretariat of the Green Climate Fund to encourage them to adopt a safeguard policy which will protect the rights of indigenous peoples in the projects they fund. As a result of this effort and the active advocacy of indigenous peoples, in June 2017 the Green Climate Fund secretariat released a draft indigenous peoples' policy which is currently the subject of consultations with indigenous peoples.

74. The adoption of such policies is a first step that United Nations bodies can take to comply with their obligations set forth in articles 41 and 42 of the Declaration. Of note is that the United Nations bodies, including the Permanent Forum on Indigenous Issues and its secretariat, have developed several capacity-building tools and training modules for the mainstreaming of the Declaration in the work of United Nations agencies, bodies, funds and other entities.

75. It has to be emphasized that United Nations agencies, programmes and funds engaged in development work need to apply the human rights-based approach seriously, and use the Declaration when designing and developing their work at the country levels. This should be done in cooperation with indigenous peoples as a demonstration of their efforts to respect the right of indigenous peoples to participate in decision-making in matters that affect them.

76. In spite of the existence of good policies and guidelines on indigenous peoples, the Special Rapporteur sees the need to raise further awareness on the Declaration within the United Nations system itself. It is particularly frustrating to see the lack of coherence within the United Nations system in terms of actions taken to protect the rights of indigenous peoples, especially at the country level.

77. In the outcome document of the World Conference on Indigenous Peoples of 2014, which the Member States adopted by consensus, the General Assembly urged the United Nations system to contribute to the full implementation of the rights enshrined in the Declaration and in no way diminish or limit them. The system-wide action plan adopted as a result of the World Conference may improve the effectiveness and coordination of the United Nations system with regard to the implementation of the Declaration.[73]

78. The International Labour Organization has a particular standing among United Nations agencies with regard to the rights of indigenous peoples, owing to its role in the promotion and implementation of ILO Convention No. 169. The Declaration and ILO Convention No. 169 are complementary international human rights instruments and constitute the minimum human rights standards needed for the dignity, well-being and survival of indigenous peoples. ILO plays an important role, including through technical advice, in the operationalization of the rights of indigenous peoples. Within this context, it is important to recall that, when interpreting human rights standards, a progressive approach is required, so that a human rights instrument can never be used to diminish subsequently recognized standards.[74]

[73] System-wide action plan for ensuring a coherent approach to achieving the ends of the United Nations Declaration on the Rights of Indigenous Peoples (see E/C.19/2016/5).

[74] ILO Convention No. 169, article 35.

## XI. Universal responsibility for implementation

79. Protection and promotion of human rights, including the rights of indigenous peoples, is a universal responsibility. Since the adoption of the Guiding Principles on Business and Human Rights, there is a better understanding on how the private sector can meet this responsibility. Some policy initiatives have been adopted on the basis of the Declaration[75] although, according to allegations received by the mandate holder, business activities, particularly those related to infrastructure building and extractive industries, are still far from respecting the rights enshrined therein. The role of international financial institutions and private investors in the promotion of the Declaration within their field of work is essential in this regard.[76]

80. Development and conservation civil society organizations are also important actors. Their work should adhere to a human rights-based approach, by cooperating with indigenous peoples in achieving the ends of the Declaration and supporting their own self-determined commitments to respect the Declaration. It is positive that already in 2008, the International Union for Conservation of Nature, the key global entity for the adoption of conservation policies on protected areas, explicitly pledged its commitment to implementing the Declaration in conservation work. However, as noted by the current mandate holder in her assessment of how conservation initiatives impact indigenous peoples' rights, "considerable implementation gaps remain and new threats to human rights-based conservation are emerging".[77]

81. Academic institutions have developed quite a number of good practices, which should be supported and replicated, in terms of increasing respect and understanding of the rights of indigenous peoples. This includes supporting their rights to their own knowledge, promotion of indigenous-led research, and incorporation of indigenous rights in university curricula or scholarship programmes for indigenous students.

82. The mass media also plays a role, which it should be aware of and accountable for, in terms of perpetuating racist assumptions about indigenous peoples. Positive promotion of a better understanding of indigenous rights in mainstream media is important.

83. The donor and diplomatic community in many countries can play a significant role not only in terms of providing funds, but also in extending support for the intercultural political dialogue needed.

## XII. Conclusions and recommendations

84. **The Declaration on the Rights of Indigenous Peoples is the most advanced and comprehensive international human rights instrument on the rights of indigenous peoples. It constitutes the main legal framework, together with international human rights treaties and conventions, of the work of the Special Rapporteur, whose mandate has specifically included the task of promoting its implementation since 2007.**

[75] See United Nations Global Compact, "The business reference guide to the United Nations Declaration on the Rights of Indigenous Peoples" (New York, 2013); United Nations Global Compact, "Indigenous peoples' rights and the role of free, prior and informed consent", good practice note (2014); International Petroleum Industry Environmental Conservation Association, "Indigenous peoples and the oil and gas industry: context, issues and emerging good practices" (2012); and International Council on Mining and Metals, "Indigenous peoples and mining", position statement (May 2013).

[76] See A/HRC/33/42/Add.2 (2016).

[77] See A/71/229, para. 11.

85. **The Declaration offers a historical opportunity to change the relationship of Member States with indigenous peoples from one of exclusion and marginalization into one of reconciliation, cooperation and respect. The adoption of the Declaration was, by itself, a first step by Member States, to start this new relationship and remedy past injustices and their contemporary consequences.**

86. **Ten years after its adoption, and in spite of the reaffirmation of the commitment to the Declaration made at the World Conference on Indigenous Peoples in 2014, the Special Rapporteur has to conclude that there has been limited progress in the actual implementation of the rights of indigenous peoples. This is observed in particular with regard to the core rights of indigenous peoples to self-determination and their rights to their lands, territories and resources. This conclusion is based on the work of the mandate holder since 2007.**

87. **The only way to move forward is by taking actions in good faith. This entails the holding of intercultural dialogues that are inclusive and carried out with full respect for international human rights standards. This is not to say that there has not been any progress. Many of the gains achieved so far have been outlined in the earlier sections of this report. It has to be recognized that most of these gains have been achieved because of the heightened awareness among indigenous peoples of their rights enshrined in the Declaration. They have actively organized themselves and engaged with Governments to push for the implementation of the Declaration. However, these gains do not match the expectations of indigenous peoples in terms of changes that could have taken place through an effective implementation of the Declaration.**

88. **The Special Rapporteur wishes to summarize a set of areas to which Member States should pay special attention in the development of the necessary legal, policy and other measures to implement the Declaration. The mandate holder has provided detailed recommendations on actions to be taken in all these areas, as referenced throughout the report, which could be referred to for further guidance. The Special Rapporteur hopes that the implementation of the recommendations offered by the mandate holder during the past decade can provide useful guidance to States and non-State actors.**

## Recommendations

89. **Recognition of indigenous peoples as distinct peoples entitled to the collective and individual human rights enshrined in the Declaration is a precondition for its implementation.**

90. **All measures and actions should be developed in cooperation with indigenous peoples, as stated in the Declaration.**

91. **Domestic legal frameworks should be reviewed in order to ensure coherence with international human rights standards on the rights of indigenous peoples. New legislation should be developed where necessary or existing legislation amended. Any provisions which contravene the rights of indigenous peoples should be repealed.**

92. **Public policies must be put in place as part of a coordinated and systematic action of the State to empower indigenous peoples to control their own destiny, through support for their own development priorities.**

93. **The recommendation in the outcome document of the World Conference on Indigenous Peoples which urged States to develop national action plans,**

**strategies and measures to achieve the ends of the Declaration should be implemented.[78] This can be done in conjunction with the policies and measures taken to achieve the Sustainable Development Goals for indigenous peoples.**

**94. Indigenous governance institutions and justice systems should be recognized and supported. Permanent intercultural dialogues should be established to agree on the harmonization of indigenous institutions and justice systems with the overall institutional structure of the country and with the ordinary justice system. All necessary measures have to be adopted to ensure that indigenous peoples have access without discrimination to the justice system.**

**95. The enjoyment of the rights of the indigenous peoples to their lands, territories and resources is central for their survival as distinct peoples. This requires that special and urgent efforts to ensure that legal, policy and other measures fully recognize, protect and enforce these rights, including redress when violations have occurred. In this regard, relevant court decisions should be complied with.**

**96. Consultation and free, prior and informed consent are important safeguards of the fundamental rights of indigenous peoples and essential elements for establishing a good faith and respectful relation between them and the States. States and indigenous peoples should jointly develop the measures deemed necessary to make these rights effective.**

**97. Urgent measures should be adopted to protect indigenous peoples' rights to life and security, particularly when they are exercising or defending their rights. Impunity for crimes committed against indigenous peoples must end.**

## Recommendations to the United Nations system

**98. The United Nations system has a particular role to play in the implementation of the Declaration. The Special Rapporteur would like to refer to the recommendations offered by the mandate holder in thematic and country reports to this effect, and to the communications and exchanges maintained with different United Nations bodies. Some key areas of work that could be considered are:**

**(a) Promoting awareness at all levels of the Declaration and of the main problems indigenous peoples face for the full enjoyment of their rights;**

**(b) Providing technical assistance to States, when requested, which can include awareness-raising and capacity-building, to ensure implementation of the Declaration;**

**(c) Increasing coherence with the United Nations system itself, particularly among United Nations agencies, funds and entities related to development issues, to ensure adoption of a human rights-based approach in all its programmes, projects and activities, including implementation of the Declaration and the Sustainable Development Goals;**

**(d) Prioritizing support for indigenous peoples' own initiatives and providing support for their participation in decision-making in all actions developed by the system at the country level which may affect them;**

**(e) Promoting good faith intercultural dialogue between States and indigenous peoples on the key issues identified by indigenous peoples;**

[78] General Assembly resolution 69/2, para. 32.

**(f) Supporting country-level implementation of the recommendations of the Special Rapporteur and the human rights treaty bodies related to the rights of indigenous peoples;**

**(g) Promoting the Declaration as the minimum human rights standard on the rights of indigenous peoples to be applied within the work of United Nations bodies related to the issue of business and human rights and that of international financial institutions.**

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Item 73 (b) of the provisional agenda*
**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

# Promotion of a democratic and equitable international order

## Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the sixth report of the Independent Expert on the promotion of a democratic and equitable international order, Alfred-Maurice de Zayas, submitted in accordance with Assembly resolution 71/190.

* A/72/150.

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# Report of the Independent Expert on the promotion of a democratic and equitable international order*

*Summary*

The present report examines the impact of the conditionality of loans from the International Monetary Fund on development and human rights. With reference to his sixth report to the Human Rights Council, which focused on the World Bank (A/HRC/36/40), the Independent Expert on the promotion of a democratic and equitable international order calls upon the Fund to give States adequate policy space to fulfil their human rights obligations. Instead of imposing loan conditions that weaken the public sector and induce reductions in social spending, States should be encouraged to reduce military expenditure, cooperate in efforts to prevent tax evasion, corruption and profit-shifting and reach a global consensus on sovereign debt restructuring.

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* The Independent Expert would like to express his appreciation to the committed, hardworking and competent secretariat of the Office of the United Nations High Commissioner for Human Rights and encourages the General Assembly to allocate considerably greater resources to the Office, the special procedures of the Human Rights Council, the treaty bodies and the United Nations Conference on Trade and Development.

# I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 71/190, in which the Assembly invited the Independent Expert on the promotion of a democratic and equitable international order to continue his research into the impact of financial and economic policies pursued by international organizations and other institutions on a democratic and equitable international order, in particular by the World Bank and the International Monetary Fund.

2. In the same spirit, in its resolution 71/236, entitled "Towards a New International Economic Order", the General Assembly reaffirmed that national development efforts need to be supported by an enabling international economic environment, including coherent and mutually supporting world trade, monetary and financial systems and strengthened and enhanced global economic governance, as well as by respect for each country's policy space, which set the stage for the present report.

3. The Independent Expert devoted his most recent report to the Human Rights Council (A/HRC/36/40) to an analysis of the human rights impacts of World Bank policies, as well as to redress mechanisms, including the Inspection Panel and the Compliance Advisor/Ombudsman. The present report focuses on the International Monetary Fund (IMF) and, in particular, on the "conditionality" of IMF loans. The reader will recognize the pertinence of the Independent Expert's report on the World Bank, but should bear in mind the differences between the two institutions, which each have their own Articles of Agreement[1] and specific mandates, in particular that, while the World Bank finances projects, IMF lends to Governments.

4. The present report is focused on the impacts of IMF policies on the international order and human rights. It does not contain macroeconomic analyses or forecasts, but explorations of possible solutions to endemic problems that impede the enjoyment of human rights by the millions of human beings affected by the economic and financial decisions of Governments, international organizations, transnational corporations and banks.

5. There is no doubt that the World Bank and IMF have played major roles in today's international order. Both institutions have the potential to significantly contribute to the realization of the Sustainable Development Goals and should draw inspiration from Goal 16, which aims at promoting peaceful and inclusive societies for sustainable development, providing access to justice for all and building effective, accountable and inclusive institutions at all levels (see General Assembly resolution 70/1; and A/69/700). The draft declaration on the right of peoples and individuals to international solidarity, a promising *de lege ferenda* instrument, should also be a source of encouragement for IMF to ensure that no one is left behind (see A/HRC/35/35).

6. In response to the questionnaire sent by the Independent Expert, IMF clarified that it had "a limited, technical mandate to promote freer international economic exchange and facilitate balance of payments adjustment by member countries".[2] However, even if IMF is not a "development institution" as such, nothing would prevent it from advancing inclusive economic development and human rights. In that regard, in its response, IMF acknowledged the following:

> IMF staff recognize the importance of respect for human rights and, in the discharge of its mandate under its Articles of Agreement, IMF contributes to the preconditions for the achievement of human rights. IMF activities

[1] Available from www.imf.org/external/pubs/ft/aa/; and http://go.worldbank.org/Q53G3UP520.

[2] See also International Monetary Fund, *Articles of Agreement* (Washington, D.C., 2016), article I.

indirectly promote human rights (in particular, social and economic rights) by helping to create an economic and institutional environment in which human rights can flourish.

7. According to its response, IMF exercises its monitoring and financing competences to promote a stable economic and financial environment, which in turn facilitates the exercise of human rights in member States. As early as in the *World Economic and Social Survey 2000*, that optimistic projection had been called into question. In a retrospective contained in the *World Economic and Social Survey 2017*, the conventional thinking called into question in the *Survey* was summarized as follows: "According to the logic of the [Washington] Consensus, stabilization, liberalization and privatization would automatically stimulate economic growth whose trickle-down effects should improve living standards."[3] In contrast, in the *Survey*, factors that fostered the persistence of poverty traps, including weak aggregate demand and institutional constraints, such as the prevalence of highly unequal asset holdings (especially landholdings) were identified. The profession of faith in the "trickle-down" effect dies hard and reminds us of the work of Ayn Rand in *The Virtue of Selfishness*.[4]

8. The Independent Expert is of the view that, in the discharge of its functions, IMF should ensure that its lending practices, and in particular the "conditionality"[5] thereof, do no harm to developed or developing economies and do not conflict with established human rights norms, such as by imposing privatization of government services, deregulation of markets or "austerity" measures that, as empirical evidence has shown in many cases, have led to widespread unemployment and misery. The Independent Expert does not suggest that IMF staff is indifferent to human rights, rather he sees a need for IMF to anticipate the consequences of the "conditionality" of its lending practices and to integrate ex ante human rights assessments so that its activities do not lead to violations of human rights. Moreover, there must be an effective mechanism in place to monitor the impacts of IMF activities and to apply prompt corrective measures as needed.

9. In its *Spotlight on Sustainable Development 2017* report submitted to the 2017 session of the high-level political forum on sustainable development, the Civil Society Reflection Group on the 2030 Agenda for Sustainable Development assessed how privatization and corporate capture were hijacking the 2030 Agenda for Sustainable Development. It observed that, while Governments committed in 2015 to a revitalized global partnership and declared that public finance had to play

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[3] *World Economic and Social Survey 2017: Reflecting on Seventy Years of Development Policy Analysis* (United Nations publication, Sales No. E.17.II.C.1). Available from www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/WESS_2017-FullReport.pdf.

[4] Ayn Rand, *The Virtue of Selfishness: A New Concept of Egoism* (New American Library, 1961); See also Naomi Klein, "Thanks a million, Ayn Rand, for setting the greedy free", The Guardian (28 September 2007). The author describes how Alan Greenspan discovered Ayn Rand in 1974. "What she did … was to make me think why capitalism is not only efficient and practical, but also moral". Klein comments "Rand's ideas about the 'utopia of greed' … infused [Greenspan] with a powerful new sense of mission: making money wasn't just good for him, it was good for society as a whole". Available from www.theguardian.com/commentisfree/2007/sep/29/comment.comment.

[5] International Monetary Fund, IMF Conditionality, 17 April 2017. Available from www.imf.org/en/About/Factsheets/Sheets/2016/08/02/21/28/IMF-Conditionality; Anna Yukhananov, "IMF loan conditions grow despite vows to limit them: study", Reuters, 2 April 2017. Available from www.reuters.com/article/us-imf-conditions-idUSBREA311SZ20140402; ActionAid Ghana, "Implications of IMF loans and conditionalities on the poor and vulnerable in Ghana", November 2010. Available from www.actionaid.org/sites/files/actionaid/implications_of_imf_loans_and_conditionalities_on_the_poor_and_vulnerable_in_ghana.pdf; Eurodad, "World Bank and IMF conditionaltiy: a development injustice", June 2006. www.eurodad.org/uploadedfiles/whats_new/reports/eurodad_world_bank_and_imf_conditionality_report.pdf.

a vital role in achieving the Sustainable Development Goals, "the combination of neoliberal ideology, corporate lobbying, business-friendly fiscal policies, tax avoidance and tax evasion ha[d] led to the massive weakening of the public sector and its ability to provide essential goods and services".[6]

10. In the report, the shared responsibility of the international financial institutions in the weakening of the State through the imposition of structural adjustment programmes, in particular in highly indebted countries of the global South, is noted.[7]

11. Several special rapporteurs, independent experts and working groups have already addressed the issues referred to in resolutions 71/190 and 71/236 (see A/67/302, A/69/297, A/71/302, A/HRC/7/11/Add.2, A/HRC/26/28, A/HRC/29/31 and A/HRC/34/51),[8] and the Independent Expert endorses their findings and recommendations. The impact of IMF on the international order, and in particular on the enjoyment of civil, cultural, economic, political and social rights, has also been the subject of studies by lawyers, economists and civil society organizations. The object of the present report is not to pretend to do better than Naomi Klein in her seminal book *The Shock Doctrine*,[9] or surpass professors Joseph Stiglitz,[10] Thomas Piketty,[11] Jeffrey Sachs,[12] Paul Krugman,[13] Dani Rodrik,[14] William van

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[6] Civil Society Reflection Group on the 2030 Agenda for Sustainable Development, *Spotlight on Sustainable Development 2017: Reclaiming Policies for the Public* (2017). Available from www.2030spotlight.org/en.

[7] Ibid., p. 12.

[8] See also the Reports of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, available www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx.

[9] Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (London, Penguin, 2008).

[10] See www.globalpolicy.org/social-and-economic-policy/the-three-sisters-and-other-institutions/internal-critics-of-the-world-bank-and-the-imf/42796-joseph-stiglitz.html.

[11] Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, Massachusetts and London, England, Belknap Press of Harvard University Press, 2014); see also Thomas Piketty, "The IMF, the inequality debate, and economic research", 21 September 2016. Available from http://piketty.blog.lemonde.fr/2016/09/21/the-imf-the-inequality-debate-and-economic-research/; and Carlos Góes, "IMF working paper: testing Piketty's hypothesis on the drivers of income inequality: evidence from panel VARs with heterogeneous dynamics", working paper No. WP/16/160 (International Monetary Fund, 2016). Available from www.imf.org/external/pubs/ft/wp/2016/wp16160.pdf.

[12] Jeffrey Sachs, "Fixing the IMF and the World Bank", 4 October 1999. Available from www.project-syndicate.org/commentary/fixing-the-imf-and-the-world-bank?barrier=accessreg; Jeffrey Sachs, "A project in every port", *Finance and Development*, vol. 49, No. 4 (December 2012). Available from www.imf.org/external/pubs/ft/fandd/2012/12/people.htm; Jeffrey Sachs, "A warning on the eve of the G-20 summit", *Boston Globe*, 5 July 2017. Available from www.bostonglobe.com/opinion/2017/07/05/warning-eve-summit/TL2az8LWtbMYkNGklqjhPP/story.html.

[13] Paul Krugman, "Leave zombies be", *Finance and Development*, vol. 53, No. 4 (December 2016). Available from www.imf.org/external/pubs/ft/fandd/2016/12/krugman.htm; Paul Krugman, "The conscience of a liberal: opinion pages", *New York Times*. Available from https://krugman.blogs.nytimes.com/page/2/; Paul Krugman, "The case for cuts was a lie. Why does Britain still believe it? The austerity delusion", *The Guardian*, 29 April 2015. Available from www.theguardian.com/business/ng-interactive/2015/apr/29/the-austerity-delusion.

[14] Dani Rodrik, "The G20's misguided globalism", 6 July 2017. Available from www.project-syndicate.org/print/g20-misguided-globalism-by-dani-rodrik-2017-07; Dani Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (New York and London, W.W. Norton and Company, 2011), and Dani Rodrik, *Economics Rules: The Rights and Wrongs of the Dismal Science* (W.W. Norton and Company, New York and London, 2015).

Genugten,[15] Graham Bird and Dane Rowlands.[16] The present report contains a consideration of the current situation, with a view to formulating pragmatic recommendations and aligning the Bretton Woods institutions with the international human rights treaty regime, which applies not only to States, but to intergovernmental organizations and transnational corporations (see E/C.12/2016/1).[17] In the modern, globalized world, no one can opt out of what may be referred to as the customary international law of human rights.

12. There is no shortage of opinions about the impact of the World Bank and IMF on the international order. Some observers think that the Bretton Woods institutions have greater impact on world affairs than all the resolutions of the General Assembly, the Economic and Social Council and the United Nations Conference on Trade and Development (UNCTAD) combined. Whereas, in principle, the Charter of the United Nations should prevail over all other treaties and international agreements (Article 103), the fact is that those institutions are not formally subordinated to the United Nations.[18]

13. Although IMF is a "specialized agency" under the terms of the Charter of the United Nations, the Agreement Between the United Nations and the International Monetary Fund, adopted in 1947, stipulates that "the Fund is, and is required to function as, an independent international organization". In its responses, IMF noted that "decisions by, inter alia, the General Assembly are not binding on IMF". Moreover, IMF indicated that: "As an institution concerned with economic issues, IMF is precluded from using its powers to support particular political systems or to directly engage in the promotion of human rights." That, however, cannot mean that there is no accountability or that IMF is absolved of responsibility for the adverse human rights impacts of its lending practices.

# II. Challenges

## A. Ideological obstacles

14. Notwithstanding the existence of excellent empirical studies, accurate diagnoses and innovative reform proposals, a regrettable level of inertia prevails in IMF management. In *The Shock Doctrine*, Naomi Klein focuses on the fundamental problem: economic shock therapy and crisis opportunism. She describes how the doctrine "privatize or die" has been imposed on crisis-racked countries, noting that in the 1990s "the [United States] Treasury and the IMF became much tougher in their demands for instant privatizations".[19] She describes the "Tequila Crisis" in Mexico and the "Wild West" privatizations in the Argentina of Menem and the Bolivia of Goni and the Russian Federation of Yeltsin, which had devastating human rights consequences.

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[15] Willem van Genugten, *The World Bank Group, the IMF and Human Rights: A Contextualised Way Forward* (Cambridge, United Kingdom, Intersentia, 2015).

[16] Graham Bird and Dane Rowlands, *The International Monetary Fund: Distinguishing Reality from Rhetoric* (Cheltenham, United Kingdom and Northampton, Massachusetts, Edward Elgar Publishing, 2016).

[17] See also Committee on Economic, Social and Cultural Rights, general comment No. 12 on the right to adequate food; and Committee on Economic, Social and Cultural Rights general comment No. 14 on the right to the highest attainable standard of health.

[18] See William Holder, "The relationship between the International Monetary Fund and the United Nations", in *Current Legal Issues Affecting Central Banks*, vol. 4, Robert Effros, ed. (Washington, D.C., International Monetary Fund, 1997).

[19] Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (London, Penguin, 2008); see also John Perkins, *Confessions of an Economic Hitman* (New York, Plume, 2006).

15. Some IMF insiders resisted this trend. For example, senior IMF economist Davison Budhoo memorably resigned, after accusing the Fund of using "statistical malpractice" in order to exaggerate the level of economic crisis in countries, following which IMF would propose its own solutions.[20] In Trinidad and Tobago, for example, the oil-rich country was made to look far less stable than it actually was. In another instance, Davison Budhoo contended that the Fund "invented, literally out of the blue", huge unpaid government debts. These "gross irregularities", which he claimed were deliberate and not mere "sloppy calculations", were taken as fact by the financial markets, which promptly classified Trinidad and Tobago as a bad risk and cut off financing.

16. This mismanagement in the Caribbean had its counterpart in Asia during the 1990s Asian financial crisis. Naomi Klein comments: "As far as the IMF was concerned, the crisis was going extremely well. In less than a year, it had negotiated the economic equivalent of extreme makeovers for Thailand, Indonesia, South Korea and the Philippines ... The IMF 'help' had turned crisis into catastrophe."[21] Even the IMF Independent Evaluation Office concluded that the structural adjustment demands imposed on Asian countries were "ill-advised", warning that "crisis should not be used as an opportunity to seek a long agenda of reforms just because leverage is high".[22] In their book on the subject, Graham Bird and Dane Rowlands noted that "critics also argued that the design of programs in East Asia was inappropriate, involving excessive conditionality and much more emphasis on compressing domestic demand through fiscal austerity".[23] Sakib Sherani, a Pakistani economist, explained in an article entitled "A better multilateralism" that both the World Bank and IMF had often acted:

> in concert with [United States] foreign policy — in effect, as a veritable instrument or extension of [United States] policy objectives. Evidence for this charge comes from two eminent sources: the Meltzer Commission report of 2000, commissioned by the [United States] Congress, and the IMF Independent Evaluation Office's first report released in 2001 (which found Pakistan's programmes to be "geopolitical" in nature).[24]

17. Prioritizing "growth" above all other considerations, including human rights and the environment, *The Managing Director's Global Policy Agenda: a more inclusive and resilient global economy*, a policy paper issued for the World Bank-IMF meeting in April 2017, manifests the continued commitment to neoliberal economic approaches. It does acknowledge, however, that inequality poses a problem:

> Staff will study how fiscal policies — including the progressivity of taxation, the design of social safety nets, and a basic income grant — could help address inequality and other side effects of economic integration and technology. Staff

[20] Davison Budhoo, *Enough is Enough: Dear Mr. Camdessus ... Open Letter of Resignation to the Managing Director of the International Monetary Fund* (New York, New Horizons Press, 1990), p. 102; and Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (London, Penguin, 2008), p. 10.

[21] Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (London, Penguin, 2008).

[22] Independent Evaluation Office of the International Monetary Fund, *The IMF and Recent Capital Account Crises: Indonesia, Korea, Brazil — Evaluation Report* (Washington, D.C., International Monetary Fund, 2003), p. 43. See also Allan Meltzer, "The report of the International Financial Institution Advisory Commission: comments on the critics", report prepared for Carnegie Mellon University Research Showcase, 2000. Available from https://pdfs.semanticscholar.org/6ac0/b262dd0bac92b27acf3aa3dd88ee1e5c6b35.pdf.

[23] Bird and Rowlands, *The International Monetary Fund*, p. 3.

[24] Sakib Sherani, "A better multilateralism", *Dawn*, 14 October 2016. Available from www.dawn.com/news/1289815.

> will also further explore the impact of structural reforms and financial sector policies on growth, income, jobs, and inequality.[25]

18. In fact, IMF advocacy of structural adjustment has privileged powerful corporate interests and created a vicious cycle of dependence for borrower countries. As noted by Peter Dolack:

> Ideology plays a critical role here. International lending organizations ... consistently impose austerity. The IMF's loans, earmarked ... to pay debts or stabilize currencies, always come with the same requirements to privatize public assets (which can be sold far below market value to multi-national corporations waiting to pounce); cut social safety nets; drastically reduce the scope of government services; eliminate regulations; and open economies wide to multi-national capital, even if that means the destruction of local industry and agriculture. This results in more debt, which then gives multi-national corporations and the IMF, which enforces those corporate interests, still more leverage to impose more control, including heightened ability to weaken environmental and labour laws.[26]

19. In his book *Capital in the Twenty-First Century*, Thomas Piketty observes that economic research is not designed to produce ready-made certainties, because there is no universal law of economics. Thus, while the ongoing debate among economists remains important, more crucial for the world is the effects that those theories and ideologies have on the ground, on the lives of real people.

20. Improving people's lives would require IMF to abandon obsolete economic models and take a human rights-based approach. Indeed, the Independent Expert is of the view that a change, away from the Washington consensus of privatization, deregulation and "austerity measures" to a more "progressive" philosophy of inclusive development, is essential.

21. In response to the Independent Expert's questionnaire, Human Rights Watch noted that international financial institutions continued to argue that they had a "non-political" mandate, implying that "human rights" was a "political" issue they need not address. That mindset must be changed and the self-serving argument that international financial institutions are bound only by their own internal standards must go.

22. In that regard, Rutgers professor Radhika Balakrishnan and James Heintz set out the following explanation:

> In setting the conditions attached to loans to the poorest countries, the IMF has ignored the implications its policies have for governments' ability to meet their human rights obligations. Instead, the IMF narrows its focus to stable growth and lower inflation. Adding human rights into the mix involves more than an additional chapter tacked onto a Poverty Reduction Strategy. It requires a fundamental change in how the IMF supports development. Human rights obligations represent the constraints under which macroeconomic policies must operate, not the other way around.[27]

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[25] International Monetary Fund, "The managing director's global policy agenda: a more inclusive and resilient global economy", 2017, p. 5. Available from www.imf.org/en/Publications/Policy-Papers/Issues/2017/04/18/md-spring-global-policy-agenda-a-more-inclusive-and-resilient-global-economy.

[26] Pete Dolack, "World Bank declares itself above the law", 24 March 2017. Available from www.counterpunch.org/2017/03/24/world-bank-declares-itself-above-the-law.

[27] Radhika Balakrishnan and James Heintz, "Making the International Monetary Fund accountable to human rights". Available from www.huffingtonpost.com/radhika-balakrishnan/making-the-international_b_549976.html (accessed 27 July 2017).

## B. Rhetoric and reality

23. Recently, IMF has made a considerable effort at improving its image through the issuance of factsheets, discussion notes and public statements in order to demonstrate that it has taken on board the many criticisms of its practices. Yet one must still question whether the organization has really reformed itself and whether it is now protecting social spending and prioritizing health and education. In practice, as Alexander Kentikelenis, Thomas Stubbs and Lawrence King noted, "IMF has not lived up to its own hype on social protection".[28] Whereas a growing number of IMF loans do include social spending targets, experience shows that such targets have not been met — and cannot be met. The scholars elaborated as follows:

> Stringent IMF-mandated austerity measures explain part of this trend. As countries engaged in excessive fiscal belt-tightening to meet the IMF's macroeconomic targets, few funds were left for maintaining social spending ... Under direct IMF tutelage, some of the poorest countries underfunded their social protection systems ... The organization still promotes targeted social assistance policies, at a time when global debates around the [Sustainable Development Goals] are overwhelmingly focused on the universal provision of key services ... the IMF can help by aiding low-income countries in setting solid fiscal foundations for the development of social policies. This will entail abandoning pretences of reform in IMF-supported programmes, and overcoming institutional inertia.[29]

## C. Selective conditionality

24. The IMF factsheet on conditionality indicates the following:

> When a country borrows from the IMF, its Government agrees to adjust its economic policies to overcome the problems that led it to seek financial aid from the international community. These loan conditions also serve to ensure that the country will be able to repay the Fund so that the resources can be made available to other members in need. Lending reforms approved in 2009 streamlined IMF conditionality in order to promote national ownership of strong and effective policies.[30]

25. Guidelines on conditionality were revised in 2002 and 2009.[31] In addition, revised operational guidance was given to staff, in 2014, and issued as a policy paper, with the changes thereto primarily focused on conditionality in relation to "macrosocial" (or jobs and growth) issues, the better leveraging of surveillance,

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[28] Alexander Kentikelenis, Thomas Stubbs and Lawrence King, "The IMF has not lived up to its own hype on social protection", *The Guardian*, 25 May 2016. Available from www.theguardian.com/global-development/2016/may/25/the-imf-international-monetary-fund-has-not-lived-up-to-hype-on-social-protection.

[29] Alexander Kentikelenis, Thomas Stubbs and Lawrence King, "IMF conditionality and development policy space, 1985-2014", *Review of International Political Economy*, vol. 23, No. 4 (24 May 2016). Available from www.kentikelenis.net/uploads/3/1/8/9/31894609/kentikelenis2016_imf_conditionality_and_development_policy_space.pdf.

[30] www.imf.org/About/Factsheets/Sheets/2016/08/02/21/28/IMF-Conditionality?pdf=1.

[31] International Monetary Fund, "Guidelines on conditionality", paper prepared by the Legal and Policy Development and Review Departments, 25 September 2002. Available from www.imf.org/External/np/pdr/cond/2002/eng/guid/092302.htm.

technical assistance in programme design, and improving partnerships with other institutions, in particular regional financing arrangements.[32]

26. Notwithstanding those reforms, the most obvious and common-sense loan condition should be a moratorium on military expenditure[33] for the duration of the loan. IMF has so far resisted that proposal, maintaining the following anachronistic position:

> Fund policy prohibits the establishment of conditions that would require members to reduce the level of military spending. While the amount which the authorities of a member spend on the military may be very important for the country's macroeconomic position, the Fund has taken the position that the question of military spending is so inherently political in nature that it could not be appropriately made the subject of conditionality.[34]

27. That policy is not mandated by its Articles of Agreement, however, and, even if it were, the articles are subject to amendment.

28. In addition to the selective exclusion of loan conditions relating to military expenditure, the European Network on Debt and Development (Eurodad),[35] a non-governmental organization working on issues relating to debt, development finance and poverty reduction, presents the argument that IMF conditionality constitutes an impediment to development policies and democratically defined sustainable development strategies. In the view of Eurodad, appropriate financing would empower peoples to chart their own paths towards development and ending poverty.

29. Scholars Radhika Balakrishnan and James Heintz have pointed out that the Group of 20, a group of States with hard-law human rights obligations, has bailed out IMF using taxpayer money without applying a condition that IMF policies support human rights enhancement.[36] In the context of conditions these human rights obligations must now be brought on board as quid pro quo. "In exchange for the G-20's financial support, the IMF must be held accountable for advancing human rights for all."[37]

30. To the extent that IMF maintains its focus on imposing strict limits on government spending, it must be clearly defined what kind of government spending is toxic and what is not. Under no conditions should government spending for health and education be reduced. However, military procurement and research and development spending should be paused for the duration of IMF loans. Where security concerns exist, the United Nations and regional arrangements should provide what is known as "collective security".

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[32] International Monetary Fund, "Revised operational guidance to IMF staff on the 2002 conditionality guidelines", 2014. Available from www.imf.org/en/Publications/Policy-Papers/Issues/2016/12/31/Revised-Operational-Guidance-to-IMF-Staff-on-the-2002-Conditionality-Guidelines-PP4889.

[33] Stockholm International Peace Research Institute, SIPRI military expenditure database. Available from https://sipri.org/databases/milex.

[34] Ross Leckow, "Conditionality in the International Monetary Fund", 7 May 2002. Available from www.imf.org/external/np/leg/sem/2002/cdmfl/eng/leckow.pdf;and Susan Jackson, "Military spending and the Washington consensus: the unrecognized link between militarization and the global political economy", PhD dissertation, University of Arizona, 2008. Available from http://arizona.openrepository.com/arizona/bitstream/10150/193513/1/azu_etd_2867_sip1_m.pdf.

[35] See www.eurodad.org/; and www.eurodad.org/Countdown-2017-UN-FfD-Forum.

[36] Radhika Balakrishnan and James Heintz, "Making the International Monetary Fund accountable to human rights". Available from www.huffingtonpost.com/radhika-balakrishnan/making-the-international_b_549976.html (accessed 27 July 2017).

[37] Ibid.

# III. Countries in crisis

## A. Greece

31. As the financial crisis in Greece demonstrates, IMF surveillance capacities are unequally applied, depending on the status of a member State's economy. Once an economic crisis hits, IMF may doggedly impose austerity measures as conditions, with variable consequences for rights realization in member States. Triggered by the Wall Street meltdown in 2008, the crisis in Greece dragged many weaker economies under, with disastrous consequences for economic, social and cultural rights. The IMF watchdog, its Independent Evaluation Office, determined that IMF operated in a "culture of complacency" prone to "superficial and mechanistic" analysis.[38] A series of calamitous misjudgements were made, and the warning signs of impending crisis were ignored. In the report of the Office, it was noted that its own investigators were unable to obtain key records or penetrate the activities of secretive ad hoc task forces.

32. The results of an evaluation by the Independent Evaluation Office of the performance of IMF in the run-up to the financial crisis pointed to inadequate surveillance in the euro area, which echoed a larger problem of IMF surveillance in advanced economies. Several factors were at play, including "a high degree of groupthink, intellectual capture, a general mindset that a major financial crisis in large advanced economies was unlikely, and incomplete analytical approaches".[39]

33. According to the Independent Evaluation Office, IMF violated its own cardinal rule by signing off on a bailout in 2010, even though it could offer no assurance that the package would bring the country's debts under control or clear the way for recovery. An exception was made because of the risk of "systemic contagion". Indeed, the concern being addressed was saving the monetary union, not helping Greece out of its predicament. In the report, it was also noted that:

> Some officials in Europe stated to the [Independent Evaluation Office] that, in their view, the troika-supported programs, including in Greece, were a success because they averted a breakdown of the euro area and a widely-feared exit of Greece from the single currency. Consistent with these views, the European Court of Auditors ... noted that the programs "addressed the need to safeguard the stability of the euro area or the [European Union] as a whole."[40]

34. Another critic, Stephen Lendman, described the series of disasters associated with the mismanagement of the Greek debt thus: "Even the Bretton Woods established/[United States] controlled loan shark of last resort IMF astonishingly called for Greek debt relief. It doesn't care about force-fed austerity harming ordinary people. It's concerned about contagion. If Greece implodes, expect continental fallout."[41]

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[38] Ambrose Evans-Pritchard, "IMF admits disastrous love affair with the euro and apologises for the immolation of Greece", *The Telegraph*, 29 July 2016. Available from http://eur.[illegible]st.co/imf-admits-disastrous-love-affair-with-euro-apologises-for-immolation-of-greece.

[39] Independent Evaluation Office of the International Monetary Fund, *The IMF and the Crises in Greece, Ireland, and Portugal* (Washington, D.C., International Monetary Fund, 2016), p. 37. Available from www.ieo-imf.org/ieo/files/completedevaluations/EAC%20-%20Full%20Report.pdf.

[40] Ibid., para. 80.

[41] Stephen Lendman, "IMF: Greek debt untenable", 15 July 2015. Available from www.globalresearch.ca/imf-greek-debt-untenable/5462570.

35. The Independent Evaluation Office, however, only acknowledged the failure of the bailout, without addressing the adverse human rights impacts of the conditions imposed.

36. At the end of his country visit to Greece in December 2015, the Independent Expert on foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Juan Pablo Bohoslavsky, issued a statement voicing concern about those very impacts, including the fact that an estimated 2.5 million people were without health insurance as a result of the crisis. He went on to detail that the rights to work and social security were in a state of disarray, that youth unemployment remained at 47.9 per cent and only 1 out of 10 registered unemployed persons received unemployment benefits, while millions were left without basic social security. "After five years of adjustment policies, indicators tracking economic, social and cultural rights in Greece have not improved."[42]

37. Part of the problem had been the loan "conditionality imposed by the troika consisting of IMF, the European Commission and the European Central Bank. Juan Pablo Bohoslavsky regretted that "such far-reaching reforms ... appear to be imposed by lenders with the sole goal of repayment, and the views of the Greek people are not seriously taken into consideration".[43] In the section of his report to the General Assembly on the mission (A/71/305, sect. II.B), he called for IMF to significantly broaden its definition of "sustainability" under its Debt Sustainability Framework and respect the need to provide fiscal space to guarantee and ensure core human rights obligations.

38. In the same report, Juan Pablo Bohoslavsky also focused on integrating human rights into debt policies to counter new debt vulnerabilities and endorsed a statement of the Committee on Economic, Social and Cultural Rights on "Public debt, austerity measures and the International Covenant on Economic, Social and Cultural Rights" (E/C.12/2016/1). He recalled that "both borrowing States and lenders were required to carry out human rights impact assessments prior to the provision of loans concerned, in order to ensure that the conditionalities did not disproportionately affect economic, social and cultural rights, and did not lead to discrimination" (A/71/305).

39. In that connection, in its response to the questionnaire sent in the preparation of the present report, IMF indicated the following:

> [I]n IMF programme design, attention is focused on enhancing social spending, and this then informs the Debt Sustainability Framework assessment ... IMF separately performs extensive work with its members to boost fiscal space through technical assistance and capacity-building in revenue administration, tax policy and international tax issues.

40. With respect to the specific recommendations made by Juan Pablo Bohoslavsky in his report to the Human Rights Council (A/HRC/31/60/Add.2), IMF responded as follows:

> IMF has been at the forefront of efforts to secure debt relief for Greece and to avoid excessive fiscal adjustment. ... The Fund has called for additional fiscal measures ... because the Fund views the current Greek budget structure as unsustainable. There is a pressing need to reorient the budget to better support

[42] Office of the United Nations High Commissioner for Human Rights (OHCHR), "UN human rights expert calls for debt relief to boost inclusive growth in Greece", 8 December 2015. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16844&LangID=E.

[43] Ibid.

> growth and social protection. IMF has called for reforms to ensure better coverage of the poorest populations, including the full implementation of the newly introduced guaranteed minimum income. IMF has also called for preserving labour market reforms introduced in 2011-12 to safeguard employment. ... Further debt relief is now being discussed between the Greek authorities and their Eurozone partners in the context of the ongoing [European Stability Mechanism] adjustment programme.

41. Notwithstanding the above responses, the Independent Expert agrees with many who consider that the troika is continuing to fail in the ongoing crisis in Greece, which can only be resolved by debt relief and international solidarity. Additional "austerity measures" will only lead to continuing human rights violations.[44] He agrees with the findings contained in the preliminary report of the Truth Committee on Public Debt, led by Eric Toussaint and including contributions from the former Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephas Lumina, which concluded that the Greek debt is an "odious debt" that should be repudiated.[45]

42. In that regard, in its statement to the thirtieth session of the Human Rights Council (A/HRC/30/NGO/18), Centre Europe-tiers monde criticized IMF for facilitating the looting of Greece through privatization and anti-social austerity measures and endorsed the preliminary report of the Truth Committee on Public Debt, also referred to as the Greek Debt Truth Commission, the Truth Commission or the Greek Public Debt Audit,[46] and noted:

> IMF, as an international organization is bound by any obligations incumbent on it under general rules of international law ... The IMF is required to refrain from steps that would undermine the possibility of a borrowing State complying with its own national and international human rights obligations, as stated in the United Nations Guiding principles on foreign debt and human rights: 'International financial organizations and private corporations have an obligation to respect international human rights. This implies a duty to refrain from formulating, adopting, funding and implementing policies and programmes which directly or indirectly contravene the enjoyment of human rights.' In addition, the IMF, as a specialized agency of the United Nations, is bound by the general aims and principles of the United Nations Charter, including respect for human rights and fundamental freedoms.[47]

43. The submission of Centre Europe-tiers monde continued as follows:

> Greece could legally take a unilateral act of repudiation. Such a decision is justified by peremptory considerations of justice and equity, but is also founded on sovereignty and self-determination. This is the case where there is an absence of good faith, based on article 26 of the Vienna Convention on the Law of Treaties. ... The bad faith of the creditors consisted in rendering Greece financially subservient and imposing measures affecting the fundamental rights of the Greek people, in violation of national, European and

[44] OHCHR, "UN human rights experts welcome Greek referendum and call for international solidarity", 30 June 2015. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16170&.

[45] Truth Committee on Public Debt, preliminary report. Available from http://cadtm.org/IMG/pdf/Report.pdf.

[46] See www.auditamosgrecia.org/en/executive-summary-greek-debt-audit/; see also http://greekdebttruthcommission.org/.

[47] See www.cetim.ch/debt-and-austerity-measures-imposed-on-greece-violate-the-human-rights-of-the-greek-people-and-international-law/.

> international law. Bad faith was also evident in the ultimate goal of the creditors, which was not to help the Greek people but rather ... to transform private debt into public debt and thus save the big private banks.[48]

44. The Independent Expert endorses the conclusions of the audit that the Greek debt is odious and illegitimate and that:

> the increase in debt was not due to excessive public spending, which in fact remained lower than the public spending of other Eurozone countries, but rather due to the payment of extremely high rates of interest to creditors, excessive and unjustified military spending, loss of tax revenues due to illicit capital outflows, state recapitalization of private banks, and the international imbalances created via the flaws in the design of the Monetary Union itself.[49]

45. In a leaked IMF memo to the European Commission, it was estimated that Greece's debt would reach 200 per cent of GDP in two years without relief. In 1980, it was 22.6 per cent. In 2008, 127 per cent. In 2014, 177.1 per cent. Since the beginning of the financial crisis, the economy of Greece plunged by over 25 per cent. The IMF memo continues as follows: "Greece's debt can now only be made sustainable through debt relief measures that go far beyond what Europe has been willing to consider so far."

46. However, even these dire predictions have not stopped the imposition of system-shaking loan conditions, nor the devastating human rights consequences which result from them. In February 2017, the European Union and IMF decided to impose further "austerity measures" on Greece,[50] namely, to make a further €7 billion payment to its creditors by July or risk defaulting on its entire debt, which remains at a staggering €330 billion. Whatever tactical differences may exist regarding the means to impose austerity on Greece, there are no conflicts over carrying it out. Regarding the substance of the "deal", it was noted in a Reuters report that: "Officials said the lenders would ask Greece to take 1.8 billion euros worth of new measures until 2018 and another 1.8 billion after 2018, focused on broadening the tax base and on pension cutbacks."[51] The new cuts represent 2 per cent of GDP — in human terms, a further €3.6 billion in austerity or taking another €327 from every man, woman and child in the country.

47. Sadly, the most succinct common-sense summation of the crisis in Greece was given by former Minister of Finance of Greece Yanis Varoufakis in an interview with Al-Jazeera, in which he stated that Greece was and is being subjected to "fiscal water-boarding".[52]

48. As a safeguard to prevent the further erosion of human rights in the country, the Independent Expert encourages all creditor States and financial institutions to revisit the "conditionality" of their past and future loans to Greece. Instead of demanding privatization, deregulation and reduction of social services, IMF should consider applying a different set of conditions; no loan should be awarded to any

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[48] http://www.cetim.ch/debt-and-austerity-measures-imposed-on-greece-violate-the-human-rights-of-the-greek-people-and-international-law/.

[49] Truth Committee on Public Debt, "Executive summary: Greek public debt audit report", 17 June 2015. Available from www.auditamosgrecia.org/en/executive-summary-greek-debt-audit/.

[50] Robert Stevens, "EU and IMF demand more austerity measures from Greece", 13 February 2017. Available from www.globalresearch.ca/eu-and-imf-demand-more-austerity-measures-from-greece/5574554?utm_campaign=magnet&utm_source=article_page&utm_medium=related_articles.

[51] Jan Strupczewski, "Euro zone, IMF agree on a common stance on Greece: official", Reuters (10 February 2017). Available from www.reuters.com/article/us-eurozone-greece-stance-idUSKBN15P1IL.

[52] Available from www.yanisvaroufakis.eu/2017/02/20/greeces-fiscal-waterboarding-continues-on-al-jazeera/.

country that continues spending for military procurement. In line with the recommendations made by the Independent Expert in his report to the Human Rights Council in 2014 (A/HRC/27/51), for the duration of a crisis and until the loans are paid back, a moratorium should be called on all military expenditure, save that for pensions and personnel. This means that Greece, a bankrupt country, must not be required by NATO to devote scarce resources to military expenditure.[53] Such a recommendation is desperately needed, given the results of the IMF survey on Greece conducted in 2010, in which "a significant reduction in military expenditure during the period" was envisaged.[54]

## B. Argentina

49. In 1977, in an open letter to the Argentine military junta,[55] Roberto Walsh, an Argentinian journalist, denounced the crimes of the regime, the disappearances, systematic torture and other gross violations of human rights. "These events, which stir the conscience of the civilized world, are not, however, the greatest suffering inflicted on the Argentinean people ... It is in the economic policy of this government where one discovers not only the explanation for the crimes, but a greater atrocity which punishes millions of human beings through planned misery."[56] He placed the responsibility squarely with the "austerity" measures dictated by IMF. Roberto Walsh was killed by police the following day.

50. The mismanagement of Argentine debt is not new. And, even if the blame is shared, IMF has earned no laurels. As early as 2004, the wrong options were chosen.[57] The then Minister of Finance of Argentina, Roberto Lavagna, characterized Fund surveillance efforts as "ideological assessments", which blurred the capacity of the Fund to conduct objective assessments of policy reform.[58]

51. Even the Independent Evaluation Office acknowledged that "IMF surveillance failed to highlight the growing vulnerabilities in the authorities' choice of policies

[53] Jon Stone, "NATO countries are not spending enough on defence, the alliance's chief says", Independent, 28 October 2016. Available from www.independent.co.uk/news/uk/politics/nato-jens-stoltenberg-military-spending-gdp-target-countries-not-enough-a7384236.html; and BBC News, "NATO defence spending target met, government insists", 14 February 2017. Available from www.bbc.com/news/uk-politics-38969697.

[54] International Monetary Fund, "IMF survey: Europe and IMF agree €110 billion financing plan with Greece", 2 May 2010. Available from www.imf.org/en/News/Articles/2015/09/28/04/53/socar050210a

[55] Rodolfo Walsh, "Carta abierta de Rodolfo Walsh a la junta militar" (24 March 1977), *Veredas do Direito*, vol. 4, No. 8 (2007). Available from www.domhelder.edu.br/veredas_direito/pdf/26_160.pdf.

[56] Benjamin Dangl, "After empowering the 1 per cent and impoverishing millions, IMF admits neoliberalism a failure", 31 May 2016. Available from https://towardfreedom.com/archives/globalism/after-empowering-the-1-and-impoverishing-millions-imf-admits-neoliberalism-a-failure/.

[57] Edmund Conway, "IMF admits mistakes in Argentina crisis", *The Telegraph*, 30 July 2004. Available from www.telegraph.co.uk/finance/2891368/IMF-admits-mistakes-in-Argentina-crisis.html; and Paul Blustein, "IMF says its policies crippled Argentina: internal audit finds warnings were ignored", 30 July 2004. Available from www.globalpolicy.org/component/content/article/209/43078.html.

[58] "IMF's 'role put into question': Argentina crisis evaluation", Bretton Woods Project, 21 September 2004. Available from www.brettonwoodsproject.org/2004/09/art-65659/.

and the IMF erred by supporting inadequate policies too long".[59] Roberto Lavagna agreed with the report's authors that a more participative decision-making process was needed: "the practice by certain prominent shareholders of bypassing the board raises serious transparency concerns".[60] Its correct diagnoses aside, interestingly enough, the words "human rights" do not appear in the report of the Office, which is only concerned with economic and financial matters.

## C. Tunisia

52. Observers have similarly warned that the extreme conditions imposed on Tunisia by IMF would reverse progress made in the country following the Jasmine Revolution. In March 2017, the International Trade Union Confederation warned that "IMF is pushing Tunisia to the brink of economic and political disaster with its refusal to release urgently needed funds at a time when the country most needs international support."[61] According to the Government of Tunisia, IMF suspended payments on its four-year, $2.8 billion loan "to pressure the Government into mass dismissals in the public sector, along with sales of government assets and possible cuts to pensions."[62] Among other conditions, IMF demanded that Tunisia sell stakes in three State-owned banks, in addition to abolishing 10,000 public sector jobs.[63]

53. The General Secretary of the International Trade Union Confederation contested those conditions, indicating that: "Ideological diktats like this from the IMF will throw thousands into poverty and destroy the progress that has been made and that Tunisians are determined to extend. A deepening economic crisis would lead to a resurgence of fundamentalism and increase the risk of terrorist attacks both in Tunisia and in nearby countries."

54. On 12 June 2017, the IMF Executive Board completed its first review of the economic programme of Tunisia, thereby enabling Tunisian authorities to draw an additional $314.4 million of IMF funds.[64] While Tunisia sought a waiver of some conditions, the Government did agree to privatizations, an increased value added tax and a scale-back of its public sector.[65] Participants at the meeting of the Group of 20 in Hamburg in July 2017 deplored the additional austerity measures forced on Tunisia by IMF. As early as 2015, the Bretton Woods Project had noted: "The more things change, the more they stay the same … Despite the IMF's promising rhetoric,

[59] Independent Evaluation Office of the International Monetary Fund, "IMF's Independent Evaluation Office announces release of report on the role of the IMF in Argentina", press release No. 04/02, 29 July 2004. Available from www.imf.org/External/NP/ieo/2004/pr/eng/pr0402.htm; and Independent Evaluation Office of the International Monetary Fund, *The IMF and Argentina* (Washington, D.C., International Monetary Fund, 2004). Available from www.imf.org/External/NP/ieo/2004/arg/eng/index.htm.

[60] "IMF's 'role put into question': Argentina crisis evaluation", Bretton Woods Project, 21 September 2004. Available from www.brettonwoodsproject.org/2004/09/art-65659/.

[61] International Trade Union Confederation, "IMF stranglehold pushing Tunisia to the brink", 1 March 2017. Available from www.ituc-csi.org/imf-stranglehold-pushing-tunisia.

[62] Ibid.

[63] Tarek Amara, "Tunisia to accelerate reforms as IMF freezes loan: minister", Reuters, 26 February 2017. Available from www.reuters.com/article/us-tunisia-economy-idUSKBN16508T.

[64] International Monetary Fund, "IMF executive board completes first review under the extended fund facility (EFF) arrangement with Tunisia", press release No. 17/217, 12 June 2017. Available from www.imf.org/en/News/Articles/2017/06/12/pr17217-imf-executive-board-completes-first-review-under-eff-arrangement-with-tunisia.

[65] International Monetary Fund, "Tunisia: first review under the extended fund facility, request for waivers of non-observance of performance criteria and rephasing of access", country report No. 17/203, July 2017. Available from www.imf.org/~/media/Files/Publications/CR/2017/cr17203.ashx.

IMF policies prescribed since 2011 bear an uncanny resemblance to the familiar pre-2011 policies."[66]

# IV. Role of the International Monetary Fund in the international order

## A. Health emergencies

55. In addition to their potential to weaken public sector infrastructure, IMF conditionality has been shown to threaten the right to health. Researchers have noted that, with Governments required to demonstrate rapid economic growth and fiscal constraint, long-term investments, such as those required to improve health care, are discouraged, which leaves countries with underresourced health sectors vulnerable to breakdowns and public health emergencies.

56. In a study entitled "The impact of IMF conditionality on government health expenditure: a cross-national analysis of 16 West African nations", scholars in the fields of sociology and public health linked IMF conditionality with reduced expenditure on health by Governments and consequently with setbacks in efforts to achieve universal health coverage. The academics indicate the following:

> We identify three pathways linking IMF-mandated policies to decreases in government health spending in the region: macroeconomic targets that reduce fiscal space for investment in health, limits to wage bills and civil service employment ceilings that inhibit hiring and retention of health staff; and decentralisation measures that amplify budget execution challenges in the health sector.[67]

57. The authors of the study concluded that IMF should facilitate the process of achieving universal health coverage by allowing policy space for borrowing countries to invest in health and determine their health policies free from the influence of unduly restrictive conditions. "In doing so", they stated, "IMF can learn from and collaborate with its sister institution, the World Bank, that recently supported the goal of [universal health coverage]".[68]

58. Commentators have further drawn a connection between IMF conditionality, reduced health sector spending and the Ebola outbreak in West Africa.[69] As professor Alexander Kentikelenis explained in his article in *The Lancet Global Health*:

> Economic reform programmes by the IMF have required reductions in government spending, prioritisation of debt service, and bolstering of foreign

[66] "Infographic: IMF policy in the MENA region", Bretton Woods Project, 18 December 2015. Available from www.brettonwoodsproject.org/2015/12/infographic-imf-policy-in-the-mena-region/.

[67] Thomas Stubbs and others, "The impact of IMF conditionality on government health expenditure: a cross-national analysis of 16 West African nations", *Social Science and Medicine*, vol. 174 (February 2017). Available from www.sciencedirect.com/science/article/pii/S0277953616306876.

[68] Ibid., pp. 225-226; and Sanjeev Gupta, "Can a causal link be drawn? A commentary on 'the impact of IMF conditionality on government health expenditure: a cross-national analysis of 16 West African nations'", *Social Science and Medicine*, vol. 181 (May 2017). Available from www.sciencedirect.com/science/article/pii/S0277953617301685, pp. 199-201.

[69] Adia Benton and Kim Yi Dionne, "5 things you should read before saying the IMF is blameless in the 2014 Ebola outbreak", *Washington Post*, 5 January 2015. Available from www.washingtonpost.com/news/monkey-cage/wp/2015/01/05/5-things-you-should-read-before-saying-the-imf-is-blameless-in-the-2014-ebola-outbreak/.

> exchange reserves. Such policies have often been extremely strict, absorbing funds that could be directed to meeting pressing health challenges. Although the IMF has responded to concerns about its programmes by incorporating "poverty-reduction expenditures" to boost health spending, these conditions were often not met. Thus, in 2013, just before the outbreak, whereas all three [of the most affected] countries achieved the IMF's macroeconomic policy prescriptions, they failed to meet targets for social spending.[70]

59. Writing in the *Washington Post*, professors Adia Benton and Kim Yi Dionne concluded the following:

> IMF and organizations like it have played an important role in creating a political environment in which the [Ebola] epidemic could emerge and become the deadliest on record … we argue that to ignore the effects of foreign aid and financial policies on local politics and social conditions is to miss an important part of the story.[71]

60. Scholars have likewise drawn attention to the impact of IMF conditionality on efforts to combat AIDS in developing countries.[72]

61. In another study, entitled "Impact of International Monetary Fund programs on child health", researchers found that IMF austerity policies may reduce parents' ability to look after their children's health in poor and middle-income countries. Involving some 2.8 billion people residing in 67 poor and middle-income countries from 2000 to 2005, the study examined five factors having an impact on children's health, including water, malnutrition, shelter, sanitation, and access to health care.[73]

62. Bearing in mind that the denial of adequate health care can lead to much suffering and death, the issue of accountability is inescapable. Admittedly,

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[70] Alexander Kentikelenis and others, "The International Monetary Fund and the Ebola outbreak", *The Lancet Global Health*, vol. 3, No. 2 (February 2015). Available from www.thelancet.com/journals/langlo/article/PIIS2214-109X(14)70377-8/fulltext.

[71] Adia Benton and Kim Yi Dionne, "5 things you should read before saying the IMF is blameless in the 2014 Ebola outbreak", *Washington Post*, 5 January 2015.

[72] Adia Benton, *HIV Exceptionalism: Development through Disease in Sierra Leone* (University of Minnesota Press, 2015); and Rick Rowden, *The Deadly Ideas of Neoliberalism: How the IMF has Undermined Public Health and the Fight Against AIDS* (London, UK, and New York, NY, Zed Books, 2009). Rowden worked for development non-governmental organizations for nearly a decade and examines published research, official reports, conference declarations and parliamentary statements to document the failures of neoliberal reforms to improve health outcomes. In Part Three of the book Rowden "explains the ways in which … support for strengthening public health systems and health workforces is being blocked by the IMF's fiscal and monetary policies and their associated budget restrictions and wage bill ceilings."

[73] Adel Daoud and others, "Impact of International Monetary Fund programs on child health", *Proceedings of the National Academy of Sciences of the United States of America*, vol. 114, No. 25 (20 June 2017). Available from www.pnas.org/content/early/2017/05/09/1617353114, abstract; see also Alexander Kentikelenis, "Structural adjustment and health: a conceptual framework and evidence on pathways", *Social Science and Medicine*, vol. 187 (August 2017). Available from www.sciencedirect.com/science/article/pii/S0277953617301107.

international organizations enjoy immunity from domestic legal action,[74] but that immunity is already being challenged in the United States of America, for example, by civil society groups like Earth Rights International.[75]

## B. Corruption, tax evasion and fiscal transparency

63. In principle, IMF loans should ensure that the risk of corruption and tax fraud is avoided and that appropriate monitoring and follow-up is available. Although IMF, in its publications, has recognized the importance of fiscal transparency and combating corruption, in practice, those standards are not uniformly raised.

64. As detailed by Human Rights Watch in its response to the Independent Expert's questionnaire:

> [International financial institutions] generally recognize the importance of avoiding corruption and of fiscal transparency and accountability. In practice, however, [International financial institutions] are selective when they raise these standards ... The IMF's Manual on Fiscal Transparency, which provides guidance on the implementation of its Fiscal Transparency Code, recognizes that these standards should apply to military revenue and expenditure, but in practice the institution has not used its leverage to support progress in this area.[76]

65. As an example, IMF chose not to raise with the Government of Egypt the matter of a lack of transparency and accountability over its military budget, when agreeing to a $12 billion loan. In the IMF Manual on Fiscal Transparency, which provides guidance on the implementation of its fiscal transparency code, it is recognized that those standards should apply to military revenue and expenditure,

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[74] Kristen Boon, "Privileges and immunities of international organizations", 11 June 2013. Available from http://opiniojuris.org/2013/06/11/privileges-and-immunities-of-international-organizations/; Niels Blokker and Nico Schrijver, eds., *Immunity of International Organizations* (Brill, 2015); *Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations* (General Assembly resolution 179 (II)); https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-2&chapter=3&lang=en; and International Organizations Immunities Act, 1945 22 USC § 288d(b); see also Steven Herz, "International organizations in U.S. courts: reconsidering the anachronism of absolute immunity", *31 Suffolk Transnat'l Law Review 471* (2007-2008). The International Organizations Immunities Act provides that "International organizations, their property and their assets wherever located, and by whomsoever held, shall enjoy the same immunity from suit and every form of judicial process as it enjoyed by foreign governments." In essence the World Bank has been declared the equivalent of a sovereign State and given diplomatic immunity. Yet, this law has been applied selectively. Lawsuits against Cuba are not only allowed but consistently won by plaintiffs.

[75] Claire Provost, "Farmers sue World Bank lending arm over alleged violence in Honduras", *The Guardian*, 8 March 2017. Available from www.theguardian.com/global-development/2017/mar/08/farmers-sue-world-bank-lending-arm-ifc-over-alleged-violence-in-honduras; Valentina Stackl, "Honduran Farmers Sue World Bank Group for Human Rights Violations", EarthRights International, 8 March 2017. Available from www.earthrights.org/media/honduran-farmers-sue-world-bank-group-human-rights-violations; the absolute immunity of heads of State has already been reduced since the arrest of General Pinochet and the indictment by the International Criminal Court of President Al Bashir. See www.ejiltalk.org/the-bashir-case-has-the-south-african-supreme-court-abolished-immunity-for-all-heads-of-states/; and Asad Kiyani, "Al-Bashir and the ICC: The Problem of Head of State Immunity", *Chinese Journal of International Law*, vol. 12, No. 3 (September 2013). Available from https://academic.oup.com/chinesejil/article/12/3/467/323940/Al-Bashir-amp-the-ICC-The-Problem-of-Head-of-State.

[76] International Monetary Fund Fiscal Affairs Department, *Manual on Fiscal Transparency* (Washington, D.C., 2007).

but in practice the institution has not used its leverage to support progress in that area. Other international financial institutions similarly fall short in that regard.[77]

66. On the other hand, IMF has taken action in the past to stop disbursements of approved loans when it discovered corruption. Thus, in 2012, when a $32 billion dollar gap in the finances of Angola was discovered, Human Rights Watch[78] urged the IMF managing director and Executive Board to continue advocacy that had already begun for transparency and accountability in the use of public funds. Human Rights Watch further urged IMF not to provide additional funds to Angola until the Fund and the public were able to verify both that the money was spent in the public interest and that there were reasons why financial oversight processes had been bypassed.

67. Special procedures mandate holders have also raised concerns about State-owned entities in Mozambique receiving loans for military purchases outside public knowledge.[79] While IMF suspended its standby funding upon discovery of such "secret lending", the Working Group on the issue of human rights and transnational corporations and other business enterprises and human rights and the Independent Expert on the effects of foreign debt on human rights further encouraged the Fund to support an established commission of inquiry investigating the misconduct and the protection of human rights defenders facing reprisals for having demanded transparency. Moreover, they cautioned that disproportionate conditions and further cuts in funds could jeopardize public spending in the fulfilment of economic, social and cultural rights obligations.[80]

68. In addition to advocacy for increased transparency among borrower Governments, Oxfam and others have highlighted that IMF could play a role in the fight against tax evasion, in particular given growing inequalities between and within States. At the end of the World Bank-IMF meeting in 2017, Oxfam released a statement indicating the following:

> We're not seeing the leadership we need from these institutions. This is a tricky time — some countries are taking steps that put the hard-fought progress we've made at risk. If the IMF and the Bank want to fight inequality and make trade work for everyone, then cooperating and tackling tax competition will be indispensable.[81]

69. In response to the Independent Expert's questionnaire, IMF implied that its influence in that area was primarily through technical assistance. Relying on a staff policy paper of 2014, entitled "Spillovers in international corporate taxation",[82] IMF concluded that limiting the adverse effects of tax avoidance and evasion on developing countries required capacity-building, addressing weaknesses in domestic law, and international arrangements. In that context, IMF promotes fiscal transparency.

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[77] Human Rights Watch, "Human Rights Watch submission re international financial institutions and human rights", 25 April 2017. Available from www.hrw.org/news/2017/04/25/human-rights-watch-submission-re-international-financial-institutions-and-human.

[78] Human Rights Watch, "IMF: withhold funds to Angola: require detailed explanation of $32 billion accounting gap", 27 March 2012. Available from www.hrw.org/news/2012/03/27/imf-withhold-funds-angola.

[79] See https://spcommreports.ohchr.org/TMResultsBase/DownLoadPublicCommunicationFile?gId=3320.

[80] Ibid.

[81] Oxfam International, "No breakthrough on the big issues at spring meetings", 23 April 2017. Available from www.oxfam.org/en/pressroom/reactions/no-breakthrough-big-issues-spring-meetings.

[82] International Monetary Fund, "Spillovers in international corporate taxation", policy paper, 9 May 2014. Available from www.imf.org/external/np/pp/eng/2014/050914.pdf.

70. However, in follow-up to the previous report of the Independent Expert to the General Assembly on the subject (A/71/286), the Independent Expert considers that IMF could be more proactive in making tax transparency a condition, by refusing to grant loans to those countries that are tax havens. Moreover, in order to ensure that Governments can pay back their debts, it is necessary for IMF borrower countries to adopt appropriate tax legislation and enforce it, including legislation establishing a financial transactions tax.

## C. Sovereign debt restructuring

71. In 2001, Anne Krueger, then Deputy Managing Director of IMF, proposed a new approach to sovereign debt restructuring. Whereas in domestic law individuals and corporations have recourse to bankruptcy codes that give them protection from their creditors, sovereign States do not. She elaborated as follows:

> We lack incentives to help countries with unsustainable debts resolve them promptly and in an orderly way. At present the only available mechanism requires the international community to bail out the private creditors ... Our aim would be to create a catalyst that will encourage debtors and creditors to come together to restructure unsustainable debts in a timely and efficient manner. This catalyst would take the form of a framework offering a debtor country legal protection from creditors that stand in the way of a necessary restructuring, in exchange for an obligation for the debtor to negotiate with its creditors in good faith and to put in place policies that would prevent a similar problem from arising in the future. The mere knowledge that such a framework was in place should encourage debtors and creditors to reach agreement of their own accord. Our model is one of a domestic bankruptcy court.[83]

72. Alas, her proposal was not endorsed by the ideology-bound IMF and the idea was essentially killed by Wall Street.[84] It is, however, still valid today.

73. The continuing work of IMF on sovereign debt restructuring[85] deserves expansion and implementation. Its report of 26 April 2013 on recent developments contained the following observation:

> While creditor participation has been adequate in recent restructurings, the current contractual, market-based approach to debt restructuring is becoming less potent in overcoming collective action problems, especially in pre-default

[83] Anne Krueger, First Deputy Managing Director, International Monetary Fund, "A new approach to sovereign debt restructuring", address given at the National Economists' Club Annual Members' Dinner, American Enterprise Institute, Washington, D.C., 26 November 2001. Available from www.imf.org/en/News/Articles/2015/09/28/04/53/sp112601; and "Sovereign debt restructuring and dispute resolution", speech given at the Bretton Woods Committee Annual Meeting, Washington, D.C., 6 June 2002. Available from www.imf.org/en/News/Articles/2015/09/28/04/53/sp060602.

[84] Elaine Moore, "Anne Krueger: the economist in a hurry", *Financial Times*, 7 August 2015. Available from www.ft.com/content/e3fb48a2-3bae-11e5-8613-07d16aad2152?mhq5j=e3.

[85] Juan Pablo Bohoslavsky, "Towards a multilateral legal framework for debt restructuring: six human rights benchmarks States should consider", 26 January 2015. Available from http://unctad.org/meetings/en/Presentation/gds_sd_2015-02-03-05_Bohoslavsky_en.pdf; Juan Pablo Bohoslavsky and Jernej Letnar Cernic, eds., *Making Sovereign Financing and Human Rights Work* (Hart Publishing, 2016); and Business and Human Rights Resource Centre, "Argentina: United Nations experts say the government's debt agreement with private lenders is to the detriment of peoples' human rights", 11 March 2016. Available from https://business-humanrights.org/en/argentina-un-experts-say-the-govts-debt-agreement-with-private-lenders-is-to-the-detriment-of-peoples%E2%80%99-human-rights.

cases. In response, consideration could be given to making the contractual framework more effective, including through the introduction of more robust aggregation clauses into international sovereign bonds bearing in mind the inter-creditor equity issues that such an approach may raise.[86]

74. The Independent Expert encourages IMF to mainstream the Basic Principles on Sovereign Debt Restructuring Processes, as contained in General Assembly resolution 69/319 of 10 September 2015.[87] Indeed, leaders in academia, the public sector and civil society — including Pope Francis[88] and economists Joseph Stiglitz and Thomas Piketty — have raised awareness of the need for a global bankruptcy process. The Basic Principles provide a road map for a future debt restructuring framework. Principles 1 and 8 deserve particular attention.

75. Bearing in mind that, in paragraph 2 of the resolution, the General Assembly invited all competent international organizations to support and promote the Basic Principles, IMF should join forces with other international financial institutions in facilitating debt relief programmes and removing aggressive vulture funds and hold-outs from the international financial landscape.

76. As the Independent Expert on the effects of foreign debt on human rights stated, in his remarks to the Human Rights Council Advisory Committee in 2015:

> The Guiding Principles on Business and Human Rights oblige States to ensure adequate regulation of business enterprises operating within their jurisdiction to ensure respect for human rights. In my view, this also implies the need for adequate regulation of private commercial entities in the financial sector, such as vulture funds, that may through their behaviour or activities cause negative human rights impacts, irrespectively of where such impacts take place. If vulture fund litigation in one country may impede another country to repay its restructured bond holders or trigger a debt crisis in another country, there are certainly exterritorial effects on the enjoyment of economic, social and cultural rights that need to be considered.[89]

77. In response to the Independent Expert's questionnaire, IMF responded as follows:

> Regarding an international debt restructuring mechanism, no consensus exists in the international community towards such an outcome, something also recognized by UNCTAD. In this environment, IMF reforms have focused on strengthening the existing system incrementally, by: improving debt sustainability analysis, further improving its ability to predict debt distress while ensuring it does not stand in the way of needed borrowing; reducing the risk of holdout commercial creditors through enhanced bond contract clauses; reducing the risk of official hold-out creditors through reform of the lending into official arrears policy; and providing the right framework to encourage

[86] International Monetary Fund, "Sovereign debt restructuring — recent developments and implications for the fund's legal and policy framework", 26 April 2013. Available from www.imf.org/external/np/pp/eng/2013/042613.pdf.

[87] United Nations Conference on Trade and Development, "United Nations General Assembly adopts basic principles on sovereign debt restructuring processes", 11 September 2015. Available from http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=1074.

[88] Disciples Center for Public Witness, "Pope Francis calls for global bankruptcy process", 17 August 2015. Available from http://disciplescenter.blogspot.ch/2015/08/pope-francis-calls-for-global.html.

[89] Juan Pablo Bohoslavsky, Independent Expert on the effects of foreign debt on human rights, "Vulture funds and human rights", remarks at the fourteenth session of the Human Rights Council Advisory Committee, 25 February 2015. Available from www.ohchr.org/Documents/Issues/Development/IEDebt/VultureFundsAndHumanRights2014.pdf.

early debtor-creditor engagement and efficient and timely restructuring of debt when needed.

### D. Interaction with the United Nations Conference on Trade and Development

78. UNCTAD *World Investment Reports* and *Trade and Development Reports* provide ample evidence that development requires the respect of the policy space of Governments, in particular in developing countries. In its response to the Independent Expert's questionnaire, IMF noted that it "interact[ed] regularly with UNCTAD on debt issues. We discuss challenges in debtor-creditor engagement, we collaborate in drafting the debt chapter in the reports of the Inter-Agency Task Force on Financing for Development — which provide an overview of debt developments and developments with the international architecture — and we both help to train country officials in dealing with debt issues." That current cooperation notwithstanding, the Independent Expert considers that there is not enough coordination between IMF and UNCTAD and would encourage an intensification of cooperation.

## V. New frontiers for the International Monetary Fund?

### A. An International Monetary Fund "mea culpa"?

79. In June 2016, the research department of IMF produced a paper, entitled "Neoliberalism oversold?",[90] in which it questioned the efficacy of the current guiding ideology of IMF. The paper begins with the ominous finding that: "Instead of delivering growth, some neoliberal policies have increased inequality, in turn jeopardizing durable expansion". It concludes with the following assessment:

> There are aspects of the neoliberal agenda that have not delivered as expected. Our assessment of the agenda is confined to the effects of two policies: removing restrictions on the movement of capital across a country's borders (so-called capital account liberalization); and fiscal consolidation, sometimes called "austerity", which is shorthand for policies to reduce fiscal deficits and debt levels. An assessment of these specific policies (rather than the broad neoliberal agenda) reaches three disquieting conclusions:
>
> (a) The benefits in terms of increased growth seem fairly difficult to establish when looking at a broad group of countries;
>
> (b) The costs in terms of increased inequality are prominent. Such costs epitomize the trade-off between the growth and equity effects of some aspects of the neoliberal agenda;
>
> (c) Increased inequality in turn hurts the level and sustainability of growth. Even if growth is the sole or main purpose of the neoliberal agenda, advocates of that agenda still need to pay attention to the distributional effects.[91]

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[90] Jonathan Ostry, Prakash Loungani and Davide Furceri, "Neoliberalism: oversold?", *Finance and Development*, vol. 53, No. 2 (June 2016). Available from www.imf.org/external/pubs/ft/fandd/2016/06/ostry.htm; and Rick Rowden, "The IMF confronts its N-word", Foreign Policy, 6 July 2016. Available from http://foreignpolicy.com/2016/07/06/the-imf-confronts-its-n-word-neoliberalism/.

[91] Ibid.

80. Although, in the Independent Expert's view, it does not go far enough, the analysis in the paper is praiseworthy. It reasonably suggests that economic neoliberalism has not delivered the desired results in terms of both equity and sustainability, given that, as Oxfam reported in 2017, "the wealthiest 1 per cent in the world now has as much wealth as the rest of the planet's population combined."[92]

81. Moreover, IMF recently produced a video,[93] a staff paper[94] and a promising recent study on social protection,[95] illustrating an awareness of the harms of inequality. Contrary to prior thinking, the researchers note that: "Increasing the income share of the poor and the middle class actually increases growth while a rising income share of the top 20 per cent results in lower growth — that is, when the rich get richer, benefits do not trickle down."[96]

82. These tardy "wake-up calls" should be listened to. Unfortunately, however, as the Independent Expert observed during the World Bank-IMF meeting in 2017, many in the institution still breathe the philosophy that any "growth", including that which only benefits the rich, will eventually benefit everyone, through the imaginary "trickle-down" effect, reminiscent of the objectivist ethos of Ayn Rand.[97]

## B. Gross national happiness

83. Beyond re-examining the paradigm and ideology that have so far guided IMF practice, IMF should consider re-evaluating what it evaluates in terms of countries' well-being. Since 2012, the Sustainable Development Solutions Network, a United Nations innovation initiative under the auspices of the Secretary-General, has been issuing *World Happiness Reports*,[98] in which it is illustrated that human happiness is not coterminous with GDP growth, expansion of trade and material consumption. Well-being entails food security, employment, shelter, satisfaction with social services, a healthy environment, justice, equity, peace, harmony with values, traditions, culture, empathy and solidarity. In establishing the world happiness index, the Network used, inter alia, data from the World Bank on four benchmarks, namely[99] government effectiveness, regulatory quality, rule of law, and absence of

[92] Benjamin Dangl, "After empowering the 1 per cent and impoverishing millions, IMF admits neoliberalism a failure", 31 May 2016. Available from https://towardfreedom.com/archives/globalism/after-empowering-the-1-and-impoverishing-millions-imf-admits-neoliberalism-a-failure/.

[93] Available from www.imf.org/external/mmedia/view.aspx?vid=5406736503001.

[94] Era Dabla-Norris and others, "Causes and consequences of income inequality: a global perspective", staff discussion note 15/13, 15 June 2015. Available from www.imf.org/en/Publications/Staff-Discussion-Notes/Issues/2016/12/31/Causes-and-Consequences-of-Income-Inequality-A-Global-Perspective-42986.

[95] Independent Evaluation Office, "The IMF and Social Protection" (IMF, 2017). Available from www.ieo-imf.org/ieo/pages/CompletedEvaluation279.aspx.

[96] Ibid.

[97] Ayn Rand, *Capitalism: the Unknown Ideal* (New American Library, 1966); and Introduction to Objectivist Epistemology (New American Library, 1979).

[98] United Nations Sustainable Development Solutions Network, "World Happiness Report 2016 update ranks happiest countries", 16 March 2016. Available from http://unsdsn.org/news/2016/03/16/world-happiness-report-2016-update-ranks-happiest-countries/; and http://unsdsn.org/news/2017/03/21/media-roundup-on-2017-world-happiness-report/.

[99] John Helliwell, Richard Layard and Jeffrey Sachs, eds., *World Happiness Report 2017* (New York, Sustainable Development Solutions Network, 2017), p. 34. "The quality of a country's democratic processes was based on the average of the remaining two World Bank measures: voice and accountability, and political stability and absence of violence. The results showed that for all countries taken together, the quality of delivery mattered more for well-being than did the presence or absence of democracy."

corruption, indicators which would further enable the fulfilment of States' human rights obligations.

84. The *World Happiness Reports* also align with General Assembly resolution 65/309 of 19 July 2011, in inviting States to measure the happiness of their peoples and to use this in determining public policies. On 2 April 2012, the concept was further developed at the first high-level meeting on happiness.[100] Chaired by Prime Minister of Bhutan Jigme Thinley — Bhutan being the first country worldwide to have adopted gross national happiness as its main development indicator — the meeting referred to happiness as "a new economic paradigm".[101] Shortly thereafter, on 28 June 2012, the General Assembly, by its resolution 66/281, proclaimed March 20 the International Day of Happiness.[102] IMF could promote that goal through socially oriented conditions, advancing from the Hippocratic "do no harm" mode to the proactive development mode so as to achieve a democratic and equitable international order.

## VI. Conclusions and recommendations

85. **Unlike the World Bank, which is increasingly aware of the risks and the consequences of its activities and which undertakes to investigate and take action, IMF still appears more committed to the obsolete neoliberal economic model. While the World Bank acknowledges problems and has established redress mechanisms like its Inspection Panel and its Compliance Advisor/Ombudsman, IMF is lagging behind and has been unable to correct unsustainable situations, such as the prevailing situation in Greece.**

86. **Despite its official function to safeguard global financial stability, IMF actions appear to lay bare a priority to safeguard the interests of creditors at the expense of debtors. Karin Lissakers, who served as United States representative to the IMF Executive Board for most of the 1990s, wrote in 1983 that the Fund was acting as an "enforcer of the banks' loan contracts" in Latin America, imposing harsh austerity on the debtors with the narrow objective of "free[ing] foreign exchange in order to service debts".[103]**

87. **Bearing in mind that power dynamics are changing the international order,[104] it is time for the World Bank and IMF to revisit their Articles of Agreement and discover their new vocation to promote development and human rights through "smart" lending practices that benefit not only banks and speculators, but billions of human beings. The challenge for the World Bank and IMF is to address the concerns formulated by civil society during the meeting of the institutions in 2017, including the fundamental issue of conditionality. Implementing the pertinent recommendations made by numerous special procedures mandate holders would be an initial step in the**

[100] United Nations News Centre, "Ban: new economic paradigm needed, including social and environmental progress", 2 April 2012. Available from www.un.org/apps/news/story.asp?NewsID=41685.

[101] Ibid.; see also www.un.org/esa/socdev/ageing/documents/noteonhappinessfinalclean.pdf.

[102] See www.happinessday.org/resolutions/.

[103] Karin Lissakers, "Dateline Wall Street: Faustian finance", *Foreign Policy*, No. 51 (Summer 1983), pp. 160-175.

[104] Pepe Escobar, "The G20 From Hell", 11 July 2017. Available from www.counterpunch.org/2017/07/11/the-g20-from-hell/; Kevin Zeese and Margaret Flowers, "Power Dynamics Changing In World Order", 11 July 2017. Available from www.counterpunch.org/2017/07/11/power-dynamics-changing-in-world-order/.

**right direction.[105] The human rights dimension in lending can no longer be ignored.**

**88. International law will continue evolving for the good of mankind. At the same time, no international financial institution or commercial agreement is above international law. All must respect the overarching international human rights treaty regime.[106] In order to further elucidate the concrete application of human rights norms to international financial institutions, those institutions should request an advisory opinion from the International Court of Justice. In fact, article VIII of the Agreement between the United Nations and the International Monetary Fund explicitly authorizes IMF to request advisory opinions on any legal questions arising within the scope of its activities.**

**89. Civil society activism has significantly contributed to sensitizing both the World Bank and IMF about their responsibilities in the field of human rights. The many international conferences held concerning the Sustainable Development Goals and financing for development are reason for optimism. Perhaps a change of mindset is under way, one more in tune with a world populated by more than 7 billion human beings who demand food security, access to clean water and sanitation, health care and education. The shift should also be reflected in an amendment to the IMF Articles of Agreement.[107] In the *World Economic and Social Survey 2017*, the following is emphasized: "The implementation of an ambitious agenda for sustainable development requires both greater policy space for countries so that they can determine the policies that best reflect their own national context and sufficient flexibility in order to ensure an orderly recovery from situations of economic stress, as aimed for in target 17.15 under Sustainable Development Goal 17."[108]**

**90. As a complement to civil society activism, at the meeting of the Group of 20 held in Hamburg in July 2017, participants also demonstrated an increased awareness that inequality was no longer politically sustainable. Systematic tax avoidance by corporations and the super-rich cost poor countries an estimated $200 billion a year. Gradually, business leaders are coming to an understanding that the future of the world economy, and their own companies, depends on solving the poverty crisis, as recognized in the Sustainable Development Goals. Tackling that challenge requires that the World Bank, IMF and the business community come on board.[109]**

**91. Bearing in mind the legitimate interest of IMF in loan repayment, a legal and administrative environment which enables States to significantly increase**

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[105] See www.globalpolicy.org/social-and-economic-policy/the-three-sisters-and-other-institutions/internal-critics-of-the-world-bank-and-the-imf/42796-joseph-stiglitz.html.

[106] See www.imf.org/external/np/sec/memdir/memdate.htm. More than 90 per cent of the 189 countries that are members of the World Bank and International Monetary Fund have ratified four or more international human rights treaties. Human rights are also protected to varying degrees in most countries' constitutions or legislation. All but 1 have ratified the Convention on the Rights of the Child; 189 have ratified the Convention on the Elimination of All Forms of Discrimination against Women; 178 have ratified the International Convention on the Elimination of All Forms of Racial Discrimination; 169 have ratified the International Covenant on Civil and Political Rights; 165 have ratified the International Covenant on Economic, Social and Cultural Rights.

[107] International Monetary Fund, *Articles of Agreement* (Washington, D.C., 2016). Available from www.imf.org/external/pubs/ft/aa/.

[108] *World Economic and Social Survey 2017* (United Nations publication, Sales No. E.17.II.C.1). Available from www.un.org/development/desa/dpad/wp-content/uploads/sites/45/publication/WESS_2017-FullReport.pdf.

[109] "The G20 and the Inequality Crisis", 7 July 2017. Available from www.project-syndicate.org/print/g20-solutions-to-ending-inequality-by-helle-thorning-schmidt-2017-07.

**their tax revenue, prevent waste and corruption and, if they occur, subject malfeasances to civil and penal sanctions, must be put into place. Domestic resource mobilization, mainly tax income, is essential to sustainable development. It is also necessary to make maximum resources available for the realization of rights (see A/71/304, para. 30). Thus far, however, international financial institutions and States have failed to enact the institutional reforms needed to make it happen. The Group of 77, which represents developing countries and thus the majority of Member States, has repeatedly asked for an intergovernmental tax body to be established under the auspices of the United Nations,[110] a proposal that the Independent Expert echoed in his previous report to the General Assembly, submitted in 2016 (A/71/286).**

92. **As in all human endeavours, there are priorities to be set and choices to be made. The Independent Expert is of the opinion that IMF should change its priorities and finally let go of the outdated conditions of privatization, deregulation of markets, and "austerity" in social services, which in the past have engendered human rights violations.**

93. **Henceforth, IMF should make loans subject to a new set of conditions, including:**

(a) **A moratorium on military expenditure (except for salaries and pensions) for the duration of the loan;**

(b) **Adoption of national legislation that ensures that national and transnational corporations pay their taxes, prohibits profit-shifting, and outlaws tax havens;**

(c) **Adoption of General Anti-Avoidance Rule legislation to address specific base erosion and profit shifting concerns;**[111]

(d) **Adoption of legislation imposing fines on persons and corporations which evade taxes and obliging citizens who have moneys hidden offshore to repatriate their wealth within a defined period of time, or otherwise face the risk of penal sanctions;**

(e) **Adoption of legislation to prevent corruption and bribes, accompanied by effective monitoring mechanisms;**

(f) **Enactment of financial transactions tax laws;**

(g) **Assurances by the borrower that no part of any loan is used to satisfy claims by vulture funds or hold-outs.**

94. **Furthermore, IMF should:**

(a) **Engage with and strengthen ongoing initiatives on international tax cooperation such as the automatic exchange of information and the base erosion and profit shifting initiatives and the Platform for Collaboration on Tax, as indicated in the *Global Policy Agenda* of April 2017;**

(b) **Assist jurisdictions in developing capacities to tackle illicit financial flows;**

(c) **Strengthen the global financial safety net with an adequately resourced, quota-based IMF at its centre;**

[110] See www.un.org/esa/ffd/ffdforum/wp-content/uploads/sites/3/2017/04/2ndInformal_Statement-by-G77.pdf.

[111] Ernesto Crivelli, Ruud De Mooij and Michael Keen, "Base erosion, profit shifting and developing countries", working paper No. 15/118 (International Monetary Fund, 2015).

**(d) Increase coordination and cooperation with regional financial arrangements;**

**(e) Support public investments in energy-efficient infrastructure and climate change mitigation projects;**

**(f) Contribute to public investments in education, the care economy, water and sanitation, as well as other quality public services;**

**(g) Support sustainable pension systems as promised in the *Global Policy Agenda* of April 2017;**

**(h) Provide advisory services and technical assistance to States, including in drafting tax legislation and general anti-avoidance rules;**

**(i) Guarantee that, in cases of negative human rights impacts, victims have effective recourse and receive compensation, livelihood assistance and/or resettlement.**

95. **Implementing these recommendations will benefit the entire human family. Indeed, as in the motto of Centre Europe-tiers monde: "There is not a developed world and an underdeveloped world but a single world badly developed." Only through the concerted efforts of IMF and the World Bank, together with the United Nations, will a more democratic and equitable international order emerge.**

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**Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms**

# Right to food

## Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the interim report of the Special Rapporteur on the right to food, Hilal Elver, submitted pursuant to Assembly resolution 70/154.

* A/72/150.

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# Interim report of the Special Rapporteur on the right to food

*Summary*

The present report is the first of two successive reports. Its focus is on the right to food in conflict situations. In her report, the Special Rapporteur contextualizes the dire situation of severe food insecurity in several countries currently most affected by internal and international conflict and discusses the existing regulatory architecture of human rights law and international humanitarian law. Despite well-established rules governing these two areas of law, hunger and famine in a variety of combat settings inflict massive casualties and widespread suffering on the civilian population. A principal aim of the Special Rapporteur is to raise awareness about the failure to implement existing norms and guidelines, the non-compliance of States and other political actors with existing norms and the failure to address international criminal behaviour that has a direct impact on the right to food.

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# I. General overview

## A. Introduction

1. In recent years, despite the encouraging news of declining poverty and hunger worldwide, famine and humanitarian emergencies have tragically returned. On 10 March 2017, the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator informed the Security Council that the world was facing the largest humanitarian crisis since the creation of the United Nations. This dramatic statement followed the formal declaration of famine in parts of South Sudan and the urgent call of the Secretary-General for action to prevent its spread.

2. More than 20 million people in north-east Nigeria, Somalia, South Sudan and Yemen were facing devastating forms of food insecurity at various levels.[1] In large part owing to the swift and sustained humanitarian response, the famine status in South Sudan has been downgraded and it has thus far been averted in the other three countries. The number of people on the brink of famine remains worryingly high, however. Beyond these four particularly serious situations, some 70 million people in 45 countries currently require emergency food assistance, an increase of 40 per cent from 2015.[2] Most of these countries are suffering from protracted crises or are in post-conflict situations.

3. The present report is the first of two successive reports. The present report is focused on the right to food in conflict situations, while the second will deal with the humanitarian system and its response to food crises in natural disasters, including climate-related situations.

4. After contextualizing the dire situation of severe food insecurity and the impact of conflict on the right to food, the Special Rapporteur will discuss the current regulatory architecture of human rights law and the international humanitarian law system, which has developed elaborate rules to protect the livelihoods of people in times of war. Despite well-established rules governing these two areas of law, hunger continues to inflict massive casualties in combat zones.

5. The aim of the Special Rapporteur is to discuss whether there is a need for a new legal remedy to address the threat to the right to food, which is one of the most basic human rights. The Special Rapporteur raises concerns about the failure to implement existing norms and guidelines, in particular the non-compliance of States and other political actors. While recognizing the need to adjust the legal coverage of human rights and international humanitarian law in current prolonged conflict situations, she considers whether sufficient political will is present to implement the existing normative structure and if not, what can be done to overcome this deficiency. In today's political climate, there seem to be no adverse consequences for actors who ignore or violate legal standards and rules of practice, which exist for the purpose of alleviating the costs of war to civilians with respect to their right to food.

[1] See www.un.org/sg/en/content/sg/press-encounter/2017-02-22/full-transcript-secretary-generals-joint-press-conference.

[2] The *Global Report on Food Crises 2017* lists the following countries as suffering from widespread or localized food insecurity: Afghanistan, Burundi, Central African Republic, Chad, Democratic Republic of the Congo, Ethiopia, Guatemala, Haiti, Iraq, Kenya, Madagascar, Malawi, Mozambique, Niger, Sudan, Syrian Arab Republic (including Syrian refugees in neighbouring countries), Uganda, Zimbabwe.

## B. Definition of famine

6. The Integrated Food Security Phase Classification, a standardized tool that classifies the magnitude of food insecurity, uses five distinct categories to identify the severity of a situation: minimal, which means that more than 80 per cent of households can meet basic food needs; stressed, where at least 20 per cent of households are reducing food consumption and cannot protect their livelihoods; crisis, where at least 20 per cent of households have significant food consumption gaps, leading to high levels of acute malnutrition; emergency, which is an accentuated version of the above; and famine, which is the absolute inaccessibility of food to an entire population or subgroup of a population, potentially causing death in the short term.[3] It further attributes three characteristics to famine: at least 20 per cent of households in a given group face an extreme food deficit, without the ability to cope; acute malnutrition prevalence exceeds 30 per cent; and mortality rates exceed 2 people per 10,000 inhabitants per day. Integrated Food Security Phase Classification categories three, four and five (crisis, emergency and famine) require urgent action.

## C. Conflict as a cause of famine

7. While the crises in Nigeria, Somalia, South Sudan and Yemen differ greatly in nature, what they all have in common is that they stem from conflict and are human-made. Along with other factors such as natural hazards, demographic growth, shocks to the global food supply and weak governance, conflict is a major cause of food emergencies, which can eventually lead to famine. Rarely, however, do any of these factors alone cause famine; instead, famine results from the convergence of multiple circumstances and reflects the influence of political decision-making.

8. Conflict can trigger food insecurity through the loss of assets, the undermining of communities' coping capacities and the breakdown of social support systems. The right to adequate food may be endangered in various ways, including through the disruption of agricultural activity, the deterioration of food-related economies and the deliberate undermining of access to food and humanitarian assistance by parties to the conflict. This in turn weakens resilience to absorb or recover from other shocks, such as the impacts of climate change or the volatility of food prices. Conflict also tends to exacerbate existing inequalities, leaving already vulnerable segments of society particularly exposed to food insecurity, and can cause massive internal and external displacement. While it will not be analysed in detail herein, it is also important to recognize that food insecurity often contributes to social and political unrest, which may lead to a negative spiral of conflict and hunger.

9. Contrary to popular belief, casualties resulting directly from combat usually make up only a small proportion of deaths in conflict zones, with most individuals in fact perishing from hunger and disease. Global rates of acute malnutrition have been rising since 2008. According to the Food and Agriculture Organization of the United Nations, "the proportion of undernourished people living in countries in conflict and protracted crisis is almost three times higher than that in other developing countries".[4] In 2016, over 56 million people in more than 20 countries and territories were affected by protracted conflicts and suffered from severe

[3] IPC Global Partners, *Integrated Food Security Phase Classification Technical Manual Version 2.0.: Evidence and Standards for Better Food Security Decisions* (Rome, 2012).

[4] Food and Agriculture Organization of the United Nations (FAO), "Peace and food security: investing in resilience to sustain rural livelihoods amid conflict" (Rome, 2016), p. 4. Available from www.fao.org/3/a-i5591e.pdf.

undernourishment and emergency levels of food insecurity.[5] Since 2000, 48 per cent of civil conflicts have been in Africa, where access to rural land underpins the livelihoods of many people.[6]

## D. Current food emergencies in conflict zones

10. Yemen, a country that was already one of the poorest in the Arab region, has seen an alarming rise in rates of acute malnutrition since the beginning of the civil war in 2015. Some 17 million Yemenis — 60 per cent of the population — are food insecure, while 7 million are at risk of famine and acute food insecurity, a situation that is expected to deteriorate further without emergency food assistance programmes immediately being scaled up.[7] A severe cholera outbreak that began in late April is disproportionately affecting malnourished individuals and has exacerbated the nutrition crisis. It has since spread to most of the country's governorates, killing at least 1,600, as a result of lack of access to safe water, poor sanitation and hygiene conditions and the near collapse of the health-care system.[8]

11. The fragile food security situation in South Sudan, a country impoverished by decades of war, has been severely compounded by the outbreak of civil war in 2013. Currently, 5.5 million people are estimated to be in Integrated Food Security Phase Classification categories three (crisis), four (emergency) and five (famine). While the famine status announced at the beginning of 2017 has been downgraded, 45,000 people in Unity and Jonglei are still facing starvation unless they receive sustained humanitarian assistance. The situation also remains dire nationwide, with a significant overall increase in food insecurity: the number of people struggling to find enough food each day has grown to 6 million. Acute malnutrition is also expected to deteriorate further with the beginning of the lean season in July.[9]

12. North-east Nigeria has historically been prone to periodic food crises and comprises some of the poorest federal states of the country. The magnitude of the effect of protracted war between the Nigerian army and the extremist group Boko Haram recently became evident when the group retreated from previously occupied territory. As Boko Haram fell back, thousands were discovered to be living in famine-like conditions. Around 5.2 million people are severely food insecure and in need of emergency assistance, and pockets of famine-like conditions have been identified in Borno and Adamawa States, affecting around 50,000 people.[10] There are still areas under the control of Boko Haram that aid agencies cannot reach, meaning that the full extent of the conditions facing trapped populations is unknown.

13. In Somalia, which has suffered from enduring conflict, an economic crisis, the ongoing presence of the terrorist group Al-Shabaab, prolonged drought and water shortages, hunger has worsened since the beginning of 2017. Some 6.7 million

[5] FAO and World Food Programme (WFP), "Protracted conflicts causing alarming spikes in severe hunger" (29 July 2016). Available from www.fao.org/news/story/en/item/427423/icode/.

[6] FAO, "Peace and food security".

[7] FAO, "Yemen situation report: July 2017". Available from www.fao.org/fileadmin/user_upload/emergencies/docs/FAOYemen_sitrep_July2017.pdf.

[8] See http://unog.ch/unog/website/news_media.nsf/(httpBriefingsLatest_en)/645EBAD80BA7F18EC1258153004F210E?OpenDocument.

[9] IPC Global Partners, "IPC in South Sudan: food insecurity situation still dire and widespread", IPC Alert, No. 8 (21 June 2017). Available from http://reliefweb.int/sites/reliefweb.int/files/resources/IPC_Alert_8_SouthSudan_May2017.pdf.

[10] Information received from the Office for the Coordination of Humanitarian Affairs in July 2017.

people, or more than half of the population, are facing acute food insecurity, of whom 3.2 million are severely food insecure.[11,12]

## II. Impact of protracted conflict on the enjoyment of the right to food

14. The enjoyment of the right to food is hampered by conflict in various ways, affecting the availability, accessibility, adequacy and sustainability of food supplies.

### A. Disruption of the agricultural sector

15. Agriculture plays an extremely important role in resilience and survival in times of crisis. Some 2.5 billion people worldwide depend on it and it is the main source of income for the populations of many of the countries currently suffering from conflict.[13,14]

16. Conflict tends to disrupt food production and deplete seed reserves by limiting agricultural activities. Farmers may be unable to work owing to restrictions on their movement or because they have fled or have been forcibly recruited into armed forces or militias. Crops are often plundered or destroyed, serious damage may be inflicted on farming and fishing infrastructure and vital agricultural input may be difficult to come by. Pastoralists and herders are particularly vulnerable to losses of livelihood, being either forced to abandon their livestock, or if bringing them, facing challenges of gaining access to feed and water. Conflicts also often disrupt livestock markets and veterinary services, block migration routes and may lead to the killing of animals.[15]

17. In South Sudan, up to 95 per cent of the population depends on farming, fishing or herding to meet their food and income needs.[16] While in times of peace the country can feed itself, conflict has severely curtailed crop production. In mid-2016, for example, many parts of the country were producing sufficient food for the local populations.[17] However, violence and mass displacement forced farmers from their fields during key planting times, crops were intentionally destroyed and livestock looted. Some 110 million square metres of land are estimated to be contaminated by landmines and explosive remnants of war and the livestock sector has lost $2 billion in potential gross domestic product during the current conflict.[18]

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[11] FAO, "Situation report: Somalia" (14 June 2017). Available from www.fao.org/emergencies/resources/documents/resources-detail/en/c/896083/.

[12] FAO, "Intensified efforts and investments needed to keep famine at bay" (6 July 2017). Available from www.fao.org/news/story/en/item/903719/icode/.

[13] United Nations Conference on Trade and Development, *Commodities and Development Report 2015: Smallholder Farmers and Sustainable Commodity Development* (New York and Geneva, 2015). Available from http://unctad.org/en/PublicationsLibrary/suc2014d5_en.pdf.

[14] FAO, "Peace and food security".

[15] FAO, "Livestock in protracted crises: the importance of livestock for resilience-building and food security of crisis-affected populations" (2016). Available from www.fao.org/3/a-i6637e.pdf.

[16] FAO, "FAO in emergencies: South Sudan" (2017). Available from www.fao.org/emergencies/countries/detail/en/c/147627/.

[17] The Conversation, "How South Sudan's warlords triggered extreme hunger in a land of plenty" (1 March 2017). Available from http://theconversation.com/how-south-sudans-warlords-triggered-extreme-hunger-in-a-land-of-plenty-73380.

[18] FAO, "Peace and food security".

18. Similarly, the Boko Haram insurgency in north-east Nigeria has severely damaged some of the country's main food-growing areas, with farmers staying away from their fields for security reasons. In 2015, the production of various staple crops in north-east Nigeria fell by an average of 76 per cent compared with output levels in the four previous years.[19] Where farmers are still producing, they face severe difficulties in reaching markets owing to the destruction of transport routes and the risk of being ambushed. Fishers have been unable to gain access to waters owing to military operations and Boko Haram has appropriated the fishing industry as a key source of income. In the Lake Chad region in general, the conflict has led to the closure of some of the largest markets in Africa, having an impact on cross-border trade in cattle, dried fish and agricultural products.[20] Local agricultural systems in the region have been disrupted by the destruction of farming and irrigation facilities and the crisis is intensifying challenges already faced in relation to cyclical droughts and floods.[21]

19. Yemen experienced a reduction of 30 per cent in agricultural output and a decrease of 70 per cent in fishing in 2016.[22] Access to farmland and extension services continues to deteriorate as a result of the conflict, while blockages of land, air and marine ports are having a severe impact on the fishery export sector. Fishing in the coastal areas of Hajjah, Ta'izz and southern Hudaydah has stopped completely and the majority of fishers have lost their livelihood opportunities. Meanwhile, the poultry sector is on the brink of collapse, owing to the deterioration of the population's purchasing power and dependence on costly imported poultry inputs.[23]

20. Before the conflict, the Syrian Arab Republic was the only country in the region that was self-sufficient in terms of food production, with some 40 per cent of livelihoods linked to agriculture. The militarization of the uprising has led many individuals who were previously employed in the agro-industry to become part of the war economy.[24] War has led to the destruction of much of the agricultural infrastructure, and the longer the conflict continues the more costly it will be to restore agricultural capacity. Some $16 billion has been lost in terms of production, along with damaged and destroyed assets and infrastructure within the agricultural sector.[25]

21. In protracted crises, agricultural assets and capacities to cope may become so severely eroded that households are left incapable of resuming their farming activities, because they have sold their farming equipment, lost their herds or are unable to recover abandoned fields, for example, thereby entrenching them in poverty. Sometimes violence can even turn agricultural assets into a liability by, for

[19] Mustapha Muhammad, "Boko Haram insurgency gnawing at Nigeria's food supply", 4 February 2015. Available from www.pressreader.com/nigeria/thisday/20150204/281938836333077.

[20] Oxfam, "Lake Chad's unseen crisis: voices of refugees and internally displaced people from Niger and Nigeria" (2016). Available from www.oxfam.org.hk/filemgr/5167/bn-lake-chad-refugees-idps-190816-en.pdf.

[21] FAO, "Situation report: Lake Chad basin" (April 2017). Available from www.fao.org/emergencies/resources/documents/resources-detail/en/c/879537/.

[22] FAO, *FAO in the 2016 Humanitarian Appeals: Saving Livelihoods Saves Lives* (2016). Available from www.fao.org/3/a-i5320e.pdf.

[23] FAO, "Yemen situation report: July 2017".

[24] Carnegie Endowment for International Peace, "Food insecurity in war-torn Syria: from decades of self-sufficiency to food dependence" (2015). Available from http://carnegieendowment.org/2015/06/04/food-insecurity-in-war-torn-syria-from-decades-of-self-sufficiency-to-food-dependence-pub-60320.

[25] FAO, *Counting the Cost: Agriculture in Syria after Six Years of Crisis* (2017). Available from www.fao.org/fileadmin/user_upload/emergencies/docs/FAO_SYRIADamageandLossReport.pdf.

example, attracting looting and violent attacks by militias. Communities may even refuse humanitarian food rations out of fear of provoking an attack.[26]

## B. Economic deterioration

22. Conflict can also severely affect household income and purchasing power. Mass unemployment and the breakdown of social services limit the ability to gain access to food, while currency devaluation, price inflation, market disruptions and reliance on costly food imports owing to shortages may render basic food items prohibitively expensive.

23. In Yemen, which already suffered from chronic underdevelopment, the conflict has further engendered a severe economic downturn. At the beginning of 2017, three quarters of all households were estimated to be experiencing substantially reduced purchasing power.[27] National gross domestic product decreased by approximately 8 per cent in 2016 and the poverty rate has doubled to 62 per cent. Social support mechanisms have all but ceased and public salaries remain unpaid for months.[28] Restrictions on freedom of movement have further deprived individuals of opportunities to make a living. Many of the country's most vulnerable people depend on cash assistance to meet their basic needs.[29]

24. Yemen relies on imports for more than 90 per cent of its staple food. The naval blockade, fighting around the port of Aden and air strikes on the port of Hudayah have severely reduced imports since 2015, leading to alarming price inflation for basic food products.

25. Conflict has also crippled the economy of South Sudan. Fighting has affected oil production, the main source of revenue, and scared off foreign investors. Hundreds of thousands of workers have been displaced by the fighting. High food prices and low agricultural production are exacerbating the situation. Severe inflation has caused the value of the country's currency to fall by 800 per cent in the past year, rendering food unaffordable for many families.[30]

26. In Somalia, conflict coupled with drought conditions has led to trade disruption and high food prices. In Nigeria, the devaluation of the currency as a result of the scarcity of agricultural produce, aggravated by the conflict and the drop in global oil prices, has caused food prices almost to double.[31] According to WFP, in the Syrian Arab Republic, food prices are eight times higher than they were before the crisis and many markets are controlled by powerful actors, leading to steep increases in food prices, especially in besieged cities.

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[26] High-level Expert Forum on Food Insecurity in Protracted Crises, "Agriculture, conflict and stability: a call for renewed focus on protection and conflict sensitive programming in agriculture and food and nutrition security" (2012). Available from www.fao.org/fileadmin/templates/cfs_high_level_forum/documents/Agriculture-Conflict-Stability_Lautze_01.pdf.

[27] FAO, United Nations Children's Fund and WFP, "As Yemen food crisis deteriorates, UN agencies appeal for urgent assistance to avert a catastrophe" (10 February 2017).

[28] WFP, "Special focus: Yemen — what does the conflict-induced public sector crisis mean for food security in Yemen?" (November 2016). Available from http://documents.wfp.org/stellent/groups/public/documents/ena/wfp288497.pdf?_ga=2.1525689.942202997.1500039309-1097001122.1462973308.

[29] Global Protection Cluster, "Briefing note: Nigeria, South Sudan, Somalia, and Yemen are facing famine or a credible risk of famine" (April 2017). Available from www.globalprotectioncluster.org/_assets/files/alerts/gpc_briefing-note_four-famines.pdf.

[30] The Conversation, "How South Sudan's warlord's triggered extreme hunger in a land of plenty".

[31] Oxfam, "Lake Chad's unseen crisis".

## C. Deliberate undermining of food security

27. In many situations, parties to armed conflict are unwilling to fulfil their responsibility to ensure access to basic services and goods, including food. They even deliberately undermine the food security of civilians for political or military reasons by intentionally targeting markets and ports, looting or besieging communities with the aim of causing hardship and starvation. They may also deliberately hamper the access and functioning of humanitarian agencies.

28. In the Syrian Arab Republic, the targeting of bakeries by government forces has been widely documented in Aleppo and Homs. Sieges, with the intent of restricting access to food and other critical supplies, have also been used as a weapon of war. At the beginning of 2016, the United Nations believed that some 400,000 civilians were living under siege in 15 towns in the Syrian Arab Republic,[32] with the former Secretary-General warning that the use of starvation as a weapon constituted a war crime. In October 2016, the 250,000 residents of Aleppo were besieged and bombarded, with the Government rejecting the requests of the United Nations to deliver aid.

29. In Yemen, sieges in a number of governorates have prevented staple food items from reaching civilians. Ta'izz, the country's second-largest city, was besieged by Houthi fighters for well over a year, blocking supply routes and leading to dire food shortages. Air strikes carried out by coalition forces have also targeted the country's agricultural sector. The Ministry of Agriculture and Irrigation found 357 bombing targets across the country, including farms, animals, water infrastructure, food stores, agricultural markets and food trucks.[33]

30. In South Sudan, the United Nations has reported that humanitarian convoys and warehouses have repeatedly come under attack.[34] In February, armed groups looted the warehouse of an international non-governmental organization in northern Jonglei, the only distributor of food in the area. In north-east Nigeria, there are also widespread reports that Boko Haram denies access to vehicles transporting food aid and steals their supplies.[35] In the Syrian Arab Republic, the Government has severely constrained relief efforts by humanitarian agencies since the beginning of the conflict. It allows relief operations to be carried out only by registered agencies and has limited the number of visas granted to international staff and restricted their movements.[36]

## D. Restrictions on humanitarian assistance in conflict settings

31. The humanitarian food assistance response, which can provide a critical lifeline of support, often faces serious political, security and infrastructure-related impediments that obstruct the effective delivery of food assistance.

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[32] Martin Chulov, "Starvation in Syria remains weapon of war despite partial ceasefire", *Guardian*, 8 April 2016.

[33] Robert Fisk, "Saudi Arabia 'deliberately targeting impoverished Yemen's farms and agricultural industry'", *Independent*, 23 October 2016.

[34] See Office for the Coordination of Humanitarian Affairs, "South Sudan: humanitarian coordinator condemns killing of six aid workers", 26 March 2017. Available from http://reliefweb.int/report/south-sudan/south-sudan-humanitarian-coordinator-condemns-killing-six-aid-workers.

[35] See "UN: World facing greatest humanitarian crisis since 1945", BBC News, 11 March 2017. Available from www.bbc.com/news/world-africa-39238808.

[36] Internal Displacement Monitoring Centre, "Syria: forsaken IDPs adrift inside a fragmenting State" (21 October 2014). Available from www.internal-displacement.org/middle-east-and-north-africa/syria/2014/syria-forsaken-idps-adrift-inside-a-fragmenting-state.

32. Countries suffering from long-standing conflict tend to be particularly fragile and have poor governance and weak infrastructure, which hampers the effective coordination and delivery of food assistance. Interference by political forces and cumbersome negotiations can also slow down the humanitarian response. Following the events of 11 September 2001, counter-terrorism policies have complicated negotiations with certain political actors to gain access to food-insecure areas, as in, for example, Somalia and the Syrian Arab Republic.

33. The delivery of humanitarian assistance may also be seriously hampered by fighting. For example, in April 2017 the forced relocation of 100 aid workers in South Sudan due to active hostilities hampered the delivery of assistance to 180,000 people. In north-east Nigeria, attacks by Boko Haram and military operations against the group continue to limit humanitarian access and an estimated 700,000 people remain extremely hard to reach. Access is further restricted by the presence of mines and improvised explosive devices.

34. In the Syrian Arab Republic and Yemen, sieges have prevented regular and sustained humanitarian deliveries to the affected cities. Humanitarian agencies have, nevertheless, continued their efforts to deliver life-saving assistance through various modalities, for example using air drops where roads are too unsafe or deploying rapid response teams whenever feasible in areas where a permanent presence cannot be established.[37]

# III. Groups most at risk

## A. Vulnerable populations

35. Conflict often reinforces existing social inequalities and intensifies the denial of human rights experienced by vulnerable populations, including the right to food. In times of conflict, disadvantaged groups, such as children under 5 years of age, orphans, pregnant and lactating women, female-headed households, refugees and internally displaced persons, older persons, persons with disabilities, minorities and already marginalized communities suffering from social exclusion, tend to have less access to resources and the lowest coping capacities, leaving them most vulnerable to the risk of an inadequate diet. Pastoralists, nomadic peoples and indigenous communities are also vulnerable, with conflict having an impact on their access to land, fishing and hunting resources. Lastly, women and girls worldwide already face many inequalities that are embedded in traditional practices and laws, constraining their access to resources and affecting their food security and nutrition.[38,39]

36. According to WFP, in Yemen some 3.3 million children and pregnant or nursing women are acutely malnourished, while an estimated 462,000 children under 5 years of age suffer from acute malnutrition. Children are also particularly susceptible to cholera owing to weak immune systems, poor nutritional intake and unsanitary living conditions.[40]

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[37] See www.unocha.org/sites/unocha/files/ECOSOC%20HAS%202017%20High%20Level%20Event%20on%20Famine%20Prevention%20and%20Response%2016%20June%202017.pdf.

[38] Global Protection Cluster, "Briefing note".

[39] FAO and Asian Development Bank, *Gender Equality and Food Security: Women's Empowerment as a Tool against Hunger* (Mandaluyong City, Philippines, 2013). Available from www.fao.org/wairdocs/ar259e/ar259e.pdf.

[40] Global Protection Cluster, "Briefing note".

37. In South Sudan, it is estimated that 276,000 children and nearly 1 in 3 pregnant and lactating women are malnourished.[41] In Somalia, people have been forced to walk hundreds of miles in search of food, water and shelter, with women and children particularly affected. Some 275,000 children are estimated to suffer from acute malnutrition, making them nine times more likely to die of diseases such as cholera and measles, which are spreading through the country.[42] Exclusion of marginalized groups from food assistance or confiscation of aid has also been witnessed, with clans that have historically suffered from social exclusion particularly affected. In north-east Nigeria, 450,000 children are expected to suffer from acute malnutrition in 2017 and without specialized treatment, 1 in 5 is likely to die.[43]

38. As food insecurity intensifies in the four above-mentioned countries, affected populations are increasingly exposed to physical threats, family separation, further marginalization, gender-based violence and attacks as they search for food and medical care. Extreme food insecurity is forcing people to turn to negative coping mechanisms, including rationing or skipping meals, begging, early marriage, child labour, child recruitment and transactional sex in exchange for food. Access to information on the availability and accessibility of food assistance is also limited, putting vulnerable groups at increased risk of exploitation and abuse.[44]

## B. Refugees and internally displaced persons

39. One of the primary effects of conflict is displacement, both internally and across borders. Displacement levels are currently at their highest since records began. A total of 65.6 million people around the world have been forced from their homes, including 22.5 million refugees. Some 28,300 persons are forced to flee every day by conflict or persecution.[45] A study conducted by WFP found that countries with the highest level of food insecurity, together with armed conflict, had the highest outward migration of refugees.[46]

40. Those fleeing conflict are often forced to leave behind their assets, and economic independence may be hampered by the costs of transit, few income opportunities and limited rights in the host State. Host communities may also experience strains on their food supplies, especially if they are already facing economic instability. In situations of massive displacement, humanitarian agencies are often unable to fully meet food demand, leaving displaced communities in dire circumstances.

41. The populations worst affected today include those in Iraq, north-east Nigeria, Somalia, South Sudan, the Syrian Arab Republic and Yemen. Within the Syrian Arab Republic, 6.3 million people are displaced and 5 million have fled to neighbouring countries since the conflict began seven years ago. Most of the

[41] United Nations News Centre, "Food insecurity threatens children in Yemen, South Sudan, Nigeria and Somalia" (23 June 2017). Available from www.un.org/sustainabledevelopment/blog/2017/06/food-insecurity-threatens-children-in-yemen-south-sudan-nigeria-and-somalia-unicef/.

[42] Ibid.

[43] Ibid.

[44] Global Protection Cluster, "Briefing note".

[45] Office of the United Nations High Commissioner for Refugees (UNHCR), "Figures at a glance". Available from www.unhcr.org/figures-at-a-glance.html.

[46] WFP, "At the root of exodus: food security, conflict and international migration" (2017). Available from https://docs.wfp.org/api/documents/WFP-0000015358/download/.

refugees live in urban or peri-urban communities and many have been pushed into poverty and are unable to secure sufficient food.[47]

42. The sheer scale of the Syrian humanitarian crisis has stretched aid agencies beyond their capacities. In late 2014, WFP was forced to scale back its operations owing to a severe funding shortfall.[48] The continuous stream of refugees has also strained host countries, in particular Lebanon, where refugees account for approximately 25 per cent of the population. In Iraq, which is already hosting thousands of internally displaced persons and other refugees, the Government has struggled to extend assistance to Syrian refugees. Syrians living in Jordan, Lebanon and Turkey are mostly reliant on external assistance and poorly paid casual labour, with worsening conditions spurring thousands to make the perilous journey to Europe.[49]

43. According to WFP, in Yemen approximately 3.1 million people are internally displaced. According to the Task Force on Population Movement, worsening conditions have forced around 1 million of those uprooted to return to conflict-riven locations, mostly as a result of food shortages and malnutrition, which are alleged to be widespread in 84 per cent of locations where internally displaced persons live. Lack of income, high food prices and prohibitive geographic distances are all factors hampering the access of displaced persons to food.[50]

44. Worsening violent conflict in north-east Nigeria, which is also spilling over into Cameroon, Chad and the Niger, has led to the displacement of 2.7 million people and forced 210,000 Nigerians to become refugees in neighbouring countries.[51] Owing to a combination of government policy and access difficulties, humanitarian assistance has focused mainly on official camps, often excluding those living with hosts. Already suffering from chronic underdevelopment and the debilitating effects of climate change, impoverished host communities are being placed under extreme pressure and are in urgent need of assistance.[52,53] Meanwhile, serious funding gaps have forced WFP to begin reducing rations, and there are concerns that the food security situation will deteriorate further if adequate levels of assistance cannot be provided.[54]

## IV. Protection of the right to food in situations of conflict

45. In recent decades, the international humanitarian response system has been essential in reducing the negative impacts of conflict on food security and lowering death tolls. Emergency aid plays a critical role in filling gaps in situations where States themselves are unable or unwilling to meet the basic needs of their populations. In many of today's conflicts, the humanitarian system is in essence

[47] Ibid.

[48] WFP, "Funding shortfall forces WFP to announce cutback to Syrian food assistance operation" (18 September 2014).

[49] WFP, "At the root of exodus".

[50] International Organization for Migration and UNHCR, "Multi-cluster needs assessment of IDPs, returnees and host communities in Yemen: Task Force on Population Movement" (21 February 2017). Available from http://reliefweb.int/report/yemen/multi-cluster-needs-assessment-idps-returnees-and-host-communities-yemen-task-force.

[51] UNHCR, "UNHCR steps up support amidst large-scale returns to Northeast Nigeria" (1 June 2017). Available from www.unhcr.org/news/press/2017/6/593013454/unhcr-steps-support-amidst-large-scale-returns-northeast-nigeria.html.

[52] Oxfam, "Lake Chad's unseen crisis".

[53] FAO, "Situation report: Lake Chad basin".

[54] WFP, "Insecurity in the Lake Chad basin: regional impact", Situation Report No. 25 (30 April 2017).

asked to take over basic functions from States and parties to the conflict. Yet it is essential to reaffirm that it is first and foremost for States and parties to the conflict to uphold their responsibilities under the applicable legal frameworks for ensuring the right to food in contexts of acute food insecurity.

46. Several branches of international law, including human rights law, international humanitarian law and international criminal law, contain norms that apply to the right to adequate food in conflict situations.

## A. International human rights law

### 1. Applicability in situations of conflict

47. Traditionally, the main distinction between international human rights law and international humanitarian law was that the former applied to situations of normality and peace and the latter to situations of conflict. It is now widely recognized, however, that this distinction is misleading as international human rights law applies in both situations.[55]

48. The Human Rights Committee has recognized the applicability of the International Covenant on Civil and Political Rights to both international and non-international conflicts. In its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States Parties to the Covenant, it confirmed that international humanitarian law and international human rights law were complementary rather than mutually exclusive. The applicability of economic, social and cultural rights specifically during armed conflicts has also been recognized and confirmed by the international practice of various organs who derive their establishment from provisions contained in the Charter of the United Nations and human rights bodies.[56]

49. While the International Covenant on Civil and Political Rights contains a derogation clause permitting States to limit the enjoyment of certain rights in situations of public emergency, the International Covenant on Economic, Social and Cultural Rights does not. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have confirmed its application at all times, including in times of conflict and general emergency.[57]

50. In its general comment No. 3 (1990) on the nature of States parties' obligations, the Committee on Economic, Social and Cultural Rights affirms that States have a core obligation to ensure the satisfaction of, at the very least, minimum essential levels of rights. This concept is further elaborated in its general comment No. 14 (2000) on the right to the highest attainable standard of health and its general comment No. 15 (2002) on the right to water, confirming the non-derogable nature of these core rights.

### 2. Protection of the right to food in situations of conflict

51. The human right to adequate food is a core right, indispensable for the enjoyment of all other human rights. In the spirit of the Universal Declaration of Human Rights, article 11 of the International Covenant on Economic, Social and

[55] OHCHR, *International Legal Protection of Human Rights in Armed Conflict* (New York and Geneva, 2011). Available from www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf.

[56] Gilles Giacca, *Economic, Social, and Cultural Rights in Armed Conflicts* (Oxford, Oxford University Press, 2014).

[57] Human Rights Committee, general comment No. 29 (2001) on derogations from provisions of the Covenant during a state of emergency, para. 3; and E/2015/59, para. 12.

Cultural Rights specifies the scope of the right to adequate food and establishes it as a legally binding obligation of States as part of an adequate standard of living.

52. Article 11 also specifically recognizes "the fundamental right of everyone to be free from hunger", which further imposes an obligation on States to ensure "the satisfaction of, at the very least, [the] minimum essential level" of this right under all circumstances.[58] Freedom from hunger is accepted as part of customary international law, rendering it binding for all States regardless of whether they are a party to the Covenant.

53. The obligations of States with regard to the right to food and other economic, social and cultural rights fall into three categories, namely the obligations to respect, protect and fulfil such rights.[59] As highlighted herein, the neglect of the right to food during a conflict may lead to further human rights violations and even cause further conflict. States have an obligation to refrain from intertering with individuals' enjoyment of their economic and social rights, including the right to food, and are also obliged to protect those rights from interference by third parties, including armed groups.

54. In terms of the fulfilment and progressive realization of rights, States cannot put aside or postpone the realization of the core content of economic and social rights to peacetime, but rather must continue to take deliberate and targeted steps in times of conflict using all appropriate means in order to fulfil those rights, as regressive measures remain prohibited.

55. The prohibition of discrimination also remains intact. In fact, the principle of non-discrimination becomes even more central when there is increased risk of regressive measures owing to emergency situations. In particular, States should eliminate discriminatory laws and practices relating to food policy and remain obliged to adopt measures to protect those most at risk as a priority.[60]

56. In its general comment No. 12 (1999) on the right to adequate food, the Committee on Economic, Social and Cultural Rights provides a comprehensive interpretation of the provisions of the right, including its normative content and States' obligations. In it, the Committee distinguishes between the inability and the unwillingness of States parties to comply, which is a useful distinction in situations of conflict. For a State party to claim it is unable to fulfil the right to food, the burden falls on the State to prove both that internal resource constraints make it impossible to provide access to food and that every effort has been made to seek international support. Failure to prove this would indicate unwillingness and constitute a violation of the International Covenant on Economic, Social and Cultural Rights. In the same vein, in paragraph 19 of the general comment the Committee clarifies that "the prevention of access to humanitarian food aid in internal conflicts or other emergency situations" through the direct action of States or other entities insufficiently regulated by States is considered a violation of the right to adequate food.[61]

57. Besides the legally binding principles of the International Covenant on Economic, Social and Cultural Rights, several non-binding principles and agreements highlight the responsibility of the State and the international community to maintain food security in situations of conflict.

[58] Committee on Economic, Social and Cultural Rights, general comment No. 3, para. 10.
[59] See Committee on Economic, Social and Cultural Rights, general comment No. 12.
[60] E/2015/59, paras. 31-32.
[61] Ibid.

58. The Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security[62] refer to humanitarian law and reiterate that food should never be used as an instrument of political and economic pressure and that States should provide for the needs of the civilian population, including access to food in situations of armed conflict and occupation.

59. Guideline 15 provides elaboration on the concept of international food aid in times of emergency, regardless of whether the emergency is as a result of conflict or of natural disaster. In this context, donor States should ensure that their food aid policies support national efforts by recipient States to achieve food security and that assistance is provided in a manner that takes into account food safety, the importance of not disrupting local food production and the nutritional and dietary needs and cultures of recipient populations. Food aid should be accompanied by a clear exit strategy and avoid creating relationships of dependency. Donors should promote increased use of local and regional commercial markets to meet food needs in famine-prone situations, thereby helping to reduce dependence on food aid.

60. International food-aid transactions should be carried out in a manner consistent with the FAO Principles of Surplus Disposal and Consultative Obligations, the Food Aid Convention and the Agreement on Agriculture. The provision of international food aid in emergency situations should take particular account of longer-term rehabilitation and development objectives in the recipient countries and should respect universally recognized humanitarian principles (see guideline 15.2). The assessment of needs and the planning, monitoring and evaluation of the provision of food aid should be made in a participatory manner and in close collaboration with recipient governments at the national and local level (see guideline 15.5).

61. The Framework for Action for Food Security and Nutrition in Protracted Crises was developed by the Committee on World Food Security in recognition of the fact that protracted crises require special attention and that appropriate responses in such contexts differ from those required in a short-term crisis or in non-crisis development contexts.[63] The Framework was endorsed by the States members of FAO in October 2015. While the Framework is voluntary and non-binding, it draws on widely endorsed international and regional instruments and global frameworks, including the Sustainable Development Goals. It is the first formulation of a global consensus to mitigate threats to food security and nutrition during protracted crises. It is intended to improve the conditions of populations affected by or at risk of a protracted crisis by building resilience, adapting to specific challenges and helping to address underlying causes. The Framework is based on 11 principles, including meeting immediate humanitarian needs and building resilient livelihoods; empowering women and girls and promoting gender equality; strengthening country ownership, participation, coordination and accountability; contributing to resolving underlying causes; and peacebuilding through food security and nutrition.

## B. International humanitarian law

62. International humanitarian law is a set of rules that seek to limit the adverse effects of armed conflict on civilians. Three of the main rules, based on the principles of distinction, proportionality and precaution, are designed to protect persons not participating in hostilities.

[62] See www.fao.org/3/a-y7937e.pdf.

[63] See www.fao.org/fileadmin/templates/cfs/Docs1415/FFA/CFS_FFA_Final_Draft_Ver2_EN.pdf.

63. While international humanitarian law does not mention the "right to food" as such, many of its provisions are intended to ensure that people cannot be denied access to food during armed conflict. International humanitarian law should be treated as an essential specific legal framework in times of armed conflict that protects peoples' livelihoods and their access to food.[64]

64. International humanitarian law and international human rights law should be seen as mutually reinforcing in the protection of economic and social rights in situations of armed conflict. International humanitarian law differs from international human rights law in the sense that it clearly binds both States and non-State actors by its obligations.[65] It further obliges parties to an armed conflict to implement the relevant rules immediately and not progressively as in human rights law. The rules of international humanitarian law cannot be derogated from in times of armed conflict, in the same way that the minimum core obligations under the International Covenant on Economic, Social and Cultural Rights are considered non-derogable.

65. The four Geneva Conventions of 1949 and two Additional Protocols of 1977 set out the major rules of international humanitarian law. International humanitarian law contains food-related provisions of a preventive nature. It prohibits the use of starvation as a weapon of war, the destruction of crops, foodstuffs, wells and other objects that are essential for the survival of civilians and forced displacement.

66. If prevention fails and malnutrition and hunger become widespread, rules governing humanitarian assistance become applicable, as their primary purpose is the safeguarding of relief undertakings for people in need.[66] Denying or blocking humanitarian assistance is also prohibited under international humanitarian law. All these food-related provisions under international humanitarian law will be dealt with below in more detail.

67. International humanitarian law distinguishes between international and non-international wars. The four Geneva Conventions of 1949 and Additional Protocol I apply to international armed conflicts, including those taking place in the Syrian Arab Republic and Yemen, while Additional Protocol II is applicable to non-international conflicts, including the civil war in South Sudan. The common article 3 of the four Geneva Conventions and customary international humanitarian law are applicable to all wars. The duty to distinguish between civilians and combatants is a key feature of the Additional Protocols.

68. Many provisions of international humanitarian law are accepted as customary law, binding on all whether or not a State is party to the Additional Protocols. The International Committee of the Red Cross (ICRC) conducted a study on customary international humanitarian law and identified 161 rules — 149 of which also apply in non-international wars — that come from general practice and that are, in its view, currently accepted as law and exist independently of the treaties.[67]

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[64] Jelena Pejic, "The right to food in situations of armed conflict: the legal framework", *Revue internationale de la Croix-Rouge*, vol. 83, No. 844 (December 2001), pp. 1097-1109.

[65] Concerning international human rights obligations, in evolving practice it is increasingly considered that under certain circumstances non-State actors can also be bound by international human rights law and can assume, voluntarily or not, obligations to respect, protect and fulfil human rights.

[66] See articles 23, 30 and 142 of the Geneva Convention relative to the Protection of Civilian Persons in Times of War and article 70 (1) of Additional Protocol I for the rules on humanitarian assistance in international armed conflict.

[67] International Committee of the Red Cross, "Customary international humanitarian law". Available from https://ihl-databases.icrc.org/customary-ihl/eng/docs/home.

69. Numerous rules apply to specific categories of person to ensure that those who cannot feed themselves are adequately supplied with food. These include prisoners of war, civilian internees and detainees. Special provisions are in place for women and children. There is also a prohibition of adverse distinction, which means that preferential treatment based on specific needs is expressly allowed and sometimes even required.[68]

### 1. Prohibition of starvation of civilians as a method of warfare

70. Starvation of civilians as a method of warfare is prohibited unconditionally in both international[69] and non-international armed conflicts.[70] Under international humanitarian law, it is prohibited "to attack, destroy, remove or render useless, for that purpose, objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works".[71]

71. These prohibitions are also generally considered to be rules of customary international law, applicable to all types of armed conflicts according to the ICRC study on customary international humanitarian law.[72] The study shows that the prohibition is violated not only when deprivation of food sources and supplies causes hunger, but also when hunger results from the denial of access to food.[73] Rule 54 prohibits attacking, destroying, removing or rendering useless objects indispensable to the survival of the civilian population, which includes foodstuffs.

72. Deliberate starvation of civilians could amount to a war crime under international criminal law, which will be discussed in the section on individual responsibility below.

### 2. Prohibition of forced displacement

73. Displacement is a major factor contributing to hunger and starvation in times of armed conflict. Forced displacement is prohibited under article 49 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War and under article 17 of Additional Protocol II. All possible measures must be taken to ensure that civilians are provided with satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of a family are not separated. Unlawful displacement constitutes a war crime under the Rome Statute of the International Criminal Court in both international and non-international armed conflict.[74]

### 3. Denying or blocking humanitarian assistance[75]

74. The principles and rules governing humanitarian assistance are fundamental for protecting the right to food in situations of armed conflict. Pursuant to General Assembly resolution 46/182, "humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality".

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[68] See articles 20 and 26 of the Geneva Convention relative to the Treatment of Prisoners of War.

[69] See article 54 (1) of Additional Protocol I.

[70] See article 14 of Additional Protocol II.

[71] See article 54 (1) of Additional Protocol I and article 14 of Additional Protocol II.

[72] See rule 53 on starvation as a method of warfare and rule 54 on attacks against objects indispensable to the survival of the civilian population.

[73] ICRC, " Rule 53: starvation as a method of warfare". Available from https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule53.

[74] See article 8, paragraphs 2 (a) (vii) and (b) (viii).

[75] Humanitarian food aid in periods of war should be distinguished from food aid in period of peace (see document E/CN.4/2002/58).

75. Parties to an armed conflict have the primary responsibility to meet the needs of the population under their control, including food and water. If parties to a conflict cannot meet those needs, they must allow and facilitate efforts by impartial humanitarian agencies to undertake relief action, including by granting the right of free passage. There are also a series of provisions that relate to relief assistance for civilians in occupied territories under the Geneva Convention relative to the Protection of Civilian Persons in Time of War (arts. 55 and 59) and Additional Protocol I (arts. 68-71). In 2014, ICRC published a useful document on humanitarian access that outlines the various steps of analysis to determine obligations relating to humanitarian access.[76]

76. States are required to grant the free passage of humanitarian assistance for specific categories of people, such as pregnant women and children, even if such persons belong to an adversary State or enemy non-State party.[77] Article 70 (1) of Additional Protocol I extends this coverage to all civilians.

77. States cannot refuse permission to deliver food except in exceptional conditions, such as a credible claim of military necessity. The military necessity argument can be invoked only to regulate humanitarian access, not to prohibit definitively the possibility for an impartial humanitarian organization to operate in certain areas. Moreover, military necessity can be invoked only to restrict humanitarian assistance temporarily and within specific geographical limits. To refuse passage would constitute a flagrant violation of the right to food and the right to life, especially if civilians die of hunger as a result. Wilfully impeding relief supplies is listed as a war crime under article 8, paragraph 2 (b) (xxv), of the Rome Statute.

78. In international armed conflicts, specific rules exist that regulate the provision of basic relief supplies to civilians in territories under the control of a party to the conflict.[78] Consent on behalf of the receiving State with respect to humanitarian assistance is necessary in both international and non-international armed conflicts and has given rise to a debate on resolving tensions between State sovereignty and emergency humanitarian relief.

## C. International criminal law: individual criminal responsibility

79. Individual criminal responsibility is fundamental to ensuring accountability for violations of international human rights and humanitarian law. Certain gross or serious violations of international human rights and humanitarian law have been considered of such gravity by the international community that they have been regulated under international criminal law, imposing individual criminal responsibility. These crimes could be prosecuted not only nationally but also internationally. Article 5 of the Rome Statute provides the most complete and updated definition of relevant international crimes, namely genocide, crimes against humanity and war crimes.

[76] ICRC, "ICRC Q&A and lexicon on humanitarian access" (2014). Available from www.icrc.org/eng/assets/files/2014/icrc-q-and-a-lexison-on-humanitarian-access-06-2014.pdf.

[77] See article 23 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War.

[78] These rules can be found mainly in articles 70 and 71 of Additional Protocol I and the Geneva Convention relative to the Protection of Civilian Persons in Time of War. Rules of international humanitarian law applicable in non-international armed conflicts are mainly found in article 3 common to the four Geneva Conventions, article 18 (2) of Additional Protocol II, and customary international humanitarian law (see *Humanitarian Access in Situations of Armed Conflict: Handbook on the International Normative Framework*, version 2, December 2014).

80. Although historically starvation and famine were permitted tactics of warfare by States, it is now widely accepted by the international community that intentionally caused famine and forced starvation are forbidden under international law. Despite this agreement, this is unfortunately still occurring.

81. Current conflicts in Afghanistan, the Central African Republic, Iraq, South Sudan, the Syrian Arab Republic and Yemen, as well as several other countries, are undermining food security and the right to food on a daily basis.[79] In some cases, States and their adversaries use food as a weapon against opposing groups by destroying or poisoning crops, blocking relief supplies and displacing people from their homes with the aim of depriving them of their livelihoods. In other cases, vulnerable groups, such as women, children, detainees and prisoners of war, are subject to neglect or left to starve. Such actions do not necessarily result in violations of the right to food but may constitute war crimes, crimes against humanity or genocide, which could give rise to individual responsibility under international criminal law.

### 1. Definition of related crimes under the Rome Statute

82. In addition to enumerating specific offences, article 7 of the Rome Statute defines crimes against humanity in a somewhat open-ended manner that can be interpreted as including famine: "inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health". Armed conflict is not a precondition, although the acts must occur in a seriously stressed situation in which starvation results from officially adopted policies and practices.[80]

83. A crime against humanity has two components: first, the accused must deliberately perpetrate the acts necessary to accomplish the specific offence, and, second, the act must be committed as part of a "widespread and systematic attack" directed against the civilian population. Famine automatically satisfies the second requirement because by definition it is widespread and systematic. The first requirement is harder to satisfy, however.

84. The intentional use of starvation as a weapon is clearly forbidden in all types of conflicts, but it is classified as a war crime only in international armed conflicts under article 8 (2) (b) (xxv) of the Rome Statute. Article 8 distinguishes between international armed conflicts and non-international armed conflicts. Acts punishable under the Rome Statute as war crimes are mainly, but not always, identical in both types of conflict. While a distinction is legally justified for certain war crimes, this is not always the case. In fact, some of the "serious violations of the laws and customs" are considered to constitute war crimes under international law in both international armed conflicts and non-international armed conflicts, but the Rome Statute nonetheless only explicitly penalizes them in international armed conflicts. A prime example of this oversight is the crime of intentionally using the starvation of civilians as a tactic of warfare. This oversight should be corrected.

### 2. Famine as an international crime

85. International criminal law already criminalizes certain conduct that leads to famine, but the legal treatment of allegations of famine has not been consistent. Many legal doctrines support an indictment for such behaviour (genocide, war

[79] FAO and WFP, "Monitoring food security in countries with conflict situations: a joint FAO/WFP update for the United Nations Security Council (July 2016)". Available from www.fao.org/3/a-c0335e.pdf.

[80] S. I. Skogly, "Crimes against humanity — revisited: is there a role for economic and social rights?", *International Journal of Human Rights*, vol. 5, No. 1 (2001), pp. 58-80.

crimes and crimes against humanity), but the international community has never called for an international criminal trial against government officials or non-State actors for creating, inflicting or prolonging famine, in part because of the legal and political complexities surrounding charges of criminality.[81]

86. Famine becomes a crime if there is sufficient evidence of an intentional or reckless effort to block certain groups from access to food under conditions of conflict or hardship. The crime of famine could result from acts of omission, but also from indirect action such as blocking humanitarian assistance, failing to uphold the relevant laws of war or failing to provide international relief systems with the necessary resources in the context of famine conditions.

87. Crimes of famine depend upon showing that the action of those responsible is either intentional or reckless.[82] To prove specific intent as the basis for criminal responsibility is difficult as death from starvation is slow and often results from diverse contributory causes.

88. It is especially problematic to prosecute someone accused of committing the crime of famine in a non-international conflict. Famine normally occurs in conjunction with other severe crimes and as such the judgments rendered often do not identify famine as an independent crime.

89. It is important to acknowledge the gap between what the law prescribes and the feasibility of its implementation, and what steps need to be taken to close the gap. Formal codification of individual responsibility pertaining to famine and severe food insecurity would clarify the conditions of criminality. At present, legal authority is scattered and fragmented. The coherent formulation of the content of the crime in an authoritative text would be an important contribution to the development of international law in this setting, where the most fundamental human rights are currently subject to massive abuse without the activation of accountability procedures.

90. The establishment of the International Criminal Court was an important step forward, but its potential remains essentially unrealized at present. It is theoretically possible to bring to justice those responsible for allowing their populations or those of their adversaries to starve to death during an armed conflict, but the political will to do so is not clearly manifested or even consistently present.

# V. Conclusion and recommendations

91. **The interdependence of food insecurity and armed conflict has become clearer in recent years. Contemporary armed conflicts increasingly do not differentiate between military operations and concentrations of civilians, and entire countries are being treated as battlefields. The expansion of combat zones exacerbates violations relating to food and water, which in turn gives rise to hunger and disease. Such patterns escalate violence and in turn increase human suffering. Starvation and famine are large-scale violations of the right to food that can adversely affect entire societies while at the same time severely harming individuals and their families.**

92. **Considering the current situation of famine in protracted conflict and post-conflict areas, as aggravated by climate change, the present lack of political interest and funding shortages, there is a need for a global convention**

[81] David Marcus, "Famine crimes in international law", *American Journal of International Law*, vol. 97, No. 2 (2003), pp. 245-281.

[82] Ibid.

**that gives States and the international community clear legal mandates to prevent famine and protect peoples' right to adequate food. This protection cannot be reliably achieved on a voluntary basis. If the international community is serious about the imperative character of the right to food and the eradication of serious food insecurity, steps must be taken to encourage the implementation of existing standards and to codify and elaborate on existing international law as it applies to food security. First, a binding agreement should be put in place to cover essential elements of conflict prevention, prohibitions associated with famine and starvation, and post-conflict rehabilitation of the agricultural sector. Second, steps should be taken to maximize local and regional sourcing of food for aid, including increasing developmental assistance for long-term recovery. Lastly, international legal standards should be developed that strongly reinforce the norm that deliberate action taken to cause starvation is a war crime or a crime against humanity and that in the most serious cases these should be referred to the International Criminal Court for investigation and prosecution. Formal recognition of famine as a crime will impede the tendency of Governments "to hide behind a curtain of natural disasters and state sovereignty to use hunger as a genocidal weapon".**[83]

93. **Considering that most conflict-prone countries are agriculture-based economies, the facilitation of a return to farming or fishing is key to the successful reintegration of ex-combatants and victims in post-conflict situations. Replacing lost productive assets is not enough, however. Countries that have recently emerged from conflict are prone to slip back into conflict again. There is a need to make a robust transition from subsistence farming to more sustainable livelihoods. For the transition period, interventions to support peasants, smallholder farmers and marginal fishers are needed, with priority for decommissioned combatants and women. These groups constitute the largest segments of the workforce in current conflict zones. The capacity of these agricultural workers to jump-start their livelihoods could be greatly enhanced by providing them with an understanding of how markets work, facilitating their access to improved production systems and making their farms more resilient.**[84]

94. **Long-term policies are essential if the international community is to avoid the periodic recurrence of famine. In their absence it should come as no surprise that current challenges will have a spillover effect in peacetime. This is a far more realistic prospect than expecting famines to disappear as soon as the guns fall silent. Human rights violations, war crimes, repression and all sorts of inequality are conditions that frequently generate famine. The attention and commitment of the international community must, as a matter of the highest priority, be directed at eliminating these root causes of famine, and not addressing just the visible symptoms of the prior food catastrophe.**[85] **An effective preventive approach to famine is likely to save many more lives than the current reactive approach.**

95. **To protect the right to food in situations of conflict the Special Rapporteur makes the recommendations set out below.**

96. **States should:**

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[83] Ibid.

[84] The work of FAO in Mindanao, the Philippines, is a good example of such rehabilitation. See FAO, "Peace and food security".

[85] Alex de Waal, *Mass Starvation: The History and Future of Famine* (forthcoming)

**(a) Take specific steps to ensure that national legislation provides a framework that recognizes the State's obligations to respect, protect and fulfil the human right to adequate food both in times of peace and in situations of conflict;**

**(b) Take all necessary legislative, judicial and budgetary measures, considering that to guarantee the minimum core content of the right to food, "freedom from hunger", is obligatory at all times;**

**(c) Guarantee that food assistance reaches the entire population in conflict zones without discrimination and distribute the maximum available resources in a non-discriminatory manner;**

**(d) Prevent, punish and redress attacks by armed groups against sources of food production and the blocking of humanitarian aid convoys, as these are key elements for the realization of the right to food and international humanitarian law commitments;**

**(e) Prioritize the availability, accessibility and adequacy of food for the most vulnerable populations, including internally displaced persons and refugees;**

**(f) Codify national criminal law that absolutely prohibits the starvation of civilians as a method of warfare and forced displacement and recognizes the blocking of humanitarian assistance as a crime subject to prosecution individually, either in national courts or, following extradition, international courts.**

97. **The international community should:**

**(a) Establish a workable early warning system designed to warn of imminent famine conditions with a view to minimizing death, devastation and the outbreak of serious diseases;**

**(b) Call for an amendment of the Rome Statute to add famine as a potential international crime, whether or not it occurs in an international or non-international armed conflict;**

**(c) Urge ICRC to convene as soon as possible a conference of States parties to the Geneva Conventions to revise international humanitarian rules and principles with a view to ensuring that the crime of famine is no longer subject to impunity;**

**(d) Revise the rules in relation to refugees to ensure that host countries provide legal status for refugees so that they are able to work, earn a living and protect their assets;**

**(e) Secure international funding other than voluntary contributions by establishing mandatory contributions at the international level, following the example of the Green Climate Fund;**

**(f) Appoint a special study group on behalf of the United Nations High Commissioner for Human Rights to lay the groundwork for a new international treaty that will address the root causes of famine and provide a legal foundation for the work of famine prevention.**